

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 626/2023 of 2023

Service Appeal No.626 of 2023

Said-ul-Islam S/o Khanadan R/o Heroshah Tehsil Dargai, District Malakand

.....Appellant

-----Versus-----

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

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Deponent


**Mr. Mr. Hakim Zada, Superintendent Malakand Levies
Office of DC/Commandant Malakand Levies
CNIC:-**

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR

Service Appeal No.626 of 2023

Said-ul-Islam S/o Khanadan R/o Heroshah Tehsil Dargai, District Malakand

UK File No. 19, Appellate Tribunal
Peshawar, Khyber Pakhtunkhwa

7098
21/8/2023

.....Appellant

-----Versus-----

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

.....Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED RETIREMENT ORDER DATED 18/10/2021 OF THE APPELLANT MAY KINDLY BE DECLARED UNLAWFUL, UN-CONSTITUTIONAL AND VOID-AB-INITIO.

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS:

PRELIMINARY OBJECTION:-

1. The appellant has got no cause of action or locus standi to submit the instant appeal.
2. The appellant is not maintainable in its present form.
3. The appellant has not come with clean hands to this Honorable Court.
4. Due to non-joinder/mis-joinder of necessary party their appeal is liable to be dismissed.
5. The appeal is barred by time and law.

Facts:-

1. It is partially correct. The appellant was appointed in Malakand Levies as Sepoy in Bps-01 rather than constable.
2. It is correct.
3. It is partially correct to the extent that Government has promulgated Levies Rules 1962 (FIC Rules) and PATA Levies Rules 2013 rather than PATA Levies Rules 1962.
4. It is incorrect. The Levy service rules 2013 were promulgated in December, 2013 further amended on 15-02-2013.
5. It is correct.
6. It is correct.
7. It is incorrect. The Levies Force of Tribal Districts were absorbed into Khyber Pakhtunkhwa Police. However, the Force of Malakand Levies is not included in the said Act, 2019 (Copy enclosed as **Annexure-A**) and not absorbed into Khyber Pakhtunkhwa Police. Only Seven (7) agencies of Tribal district the Erst while FATA, Levy Force have been merged in Khyber Pakhtunkhwa Police. This Act relates to Districts of Erst while FATA Levies Force. Furthermore, Deputy Commissioner Malakand is still the Commandant of Malakand Levies Force.
8. No comments.
9. It is incorrect. As per amended levy rules 2021 dated: 21-10-2021, qualification for promotion to the post of Subedar is FA/Matric, while the appellant is Middle pass and does not fulfill the requisite criteria/qualification for promotion to the post of Subedar.
10. It is incorrect. According to the amended Levy Rules, 2021 Schedule III dated 21-10-2021, the petitioner was retired from service after completion of requisite 33-years service as Naib Subedar. (Copy of service rules enclosed as **Annexure-B**).

11. It is incorrect. As per para-9 above.
12. It is incorrect. Peshawar High Court Peshawar (Larger Bench at principal seat) through single judgment dated: 29-11-2022 disposed all the connected 33-Writ Petitions including COCs and dismissed all the Writ Petitions and the petitioners were directed to seek legal remedy from the Honorable Service Tribunal.
13. No comments.

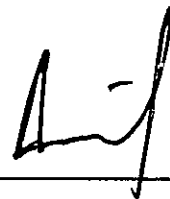
Grounds:-

- A. It is incorrect. Action taken as per law/levy rules.
- B. It is incorrect. There are no bars on the Provincial Government to amend any Law/Rules.
- C. It is incorrect. It falls in the ambit of Provincial Government (Cabinet).
- D. It is incorrect. Only seven (7) agencies of the Ex-FATA are included in the Act and not for PATA (Malakand Levies) which were not part of the said Act.
- E. No Comments. Pertains to record.
- F. The respondents seek leave to raise additional grounds at the time of arguments.

Pray:-

Furthermore, the appeal of the appellant is time barred and not based on facts and may kindly be dismissed, please.

Chief Secretary, Civil Secretariat Peshawar
Respondent No.1



Secretary Home & TA's Department, Peshawar
Respondent No.2



Home Secretary,
Khyber Pakhtunkhwa

DC/Commandant Malakand Levies
Respondent No.3



Deputy Commissioner/
Commandant
Malakand levies



3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.626/2023 of 2023

Service Appeal No.626 of 2023

Said-ul-Islam S/o Khanadan R/o Heroshah Tehsil Dargai, District Malakand

.....Appellant

-----Versus-----

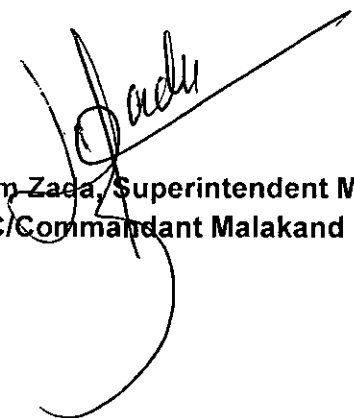
- 4. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.**
- 5. Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.**
- 6. Commandant Malakand Levies/Deputy Commissioner, District Malakand.**

.....Respondents

AFFIDAVIT

I, Mr. Mr.Hakim Zada, Superintendent Malakand Levies, DC/Commandant Office Malakand Levies do hereby solemnly affirm and declare on oath that the contents of the accompanying Reply on behalf of the Respondent No.3 and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court please.

Deponent



**Mr. Mr.Hakim Zada, Superintendent Malakand Levies
Office of DC/Commandant Malakand Levies
CNIC:-**

it is further stated on oath that in this appeal, the answering respondents have neither been pleased ex parte nor their defense has been struck off/lost.

**Superintendent
Malakand Levies Malakand**

ATTESTED



21-08-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 626/2023 of 2023

Service Appeal No.626 of 2023

Said-ul-Islam S/o Khanadan R/o Heroshah Tehsil Dargai, District Malakand

.....Appellant

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

.....Respondents

AUTHORITY:

Mr. Mr.Hakim Zada, Superintendent Malakand Levies, DC/Commandant Office Malakand Levies is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal, Peshawar and submit Comments/reply regarding subject case on behalf of the undersigned as Respondent No.3.



Deputy Commissioner/
Commandant
Malakand Levies Malakand



EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

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KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 16th SEPTEMBER, 2019.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 16th September, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-68/2019/7010.— The Khyber Pakhtunkhwa Levies Force Bill, 2019 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 12th September, 2019 and assented to by the Governor of the Khyber Pakhtunkhwa on 12th September, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA LEVIES FORCE ACT, 2019.
(KHYBER PAKHTUNKHWA ACT NO. XXXV OF 2019)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 16th September, 2019).

AN
ACT

to provide for the maintenance of Khyber Pakhtunkhwa Levies Force and to enable its transition to Khyber Pakhtunkhwa Police.

WHEREAS after Constitution (Twenty-fifth Amendment) Act, 2018 (Act No. XXXVII of 2018), the erstwhile Federally Administered Tribal Areas have been merged in the Province of the Khyber Pakhtunkhwa, and Federal Levies Force, established under the Federal Levies Force Regulation, 2012, working in the said areas, has lost its legal status for working in the merged districts and sub-divisions:

AND WHEREAS it is in the best public interest to allow the Federal Levies Force to continue its functions in the merged districts and sub-divisions and to regulate and maintain it under the administrative control of the Government of Khyber Pakhtunkhwa:

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Superintendent
Malakand District Malakand

AND WHEREAS to achieve the objectives it is expedient to give legal status to the Federal Levies Force in the merged districts and sub-divisions and to re-visit its institutional structure and functional assignment for effective discipline, better performance and optimal utility;

It is hereby enacted as follows:

1. **Short title, application, extent and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Levies Force Act, 2019.

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

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

(4) It shall come into force at once.

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

(a) "Code" means the Code of Criminal Procedure, 1898 (Act of V of 1898);

(b) "Commandant" means the Commandant of the Levies Force;

(c) "Department" means the Home and Tribal Affairs Department of the Government of Khyber Pakhtunkhwa;

(d) "Deputy Director General" means the Deputy Director General of the Levies Force;

(e) "Director General" means the Director General of the Levies Force;

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

(g) "Levies Force" means the Federal Levies Force, established under the repealed regulation and re-constituted, regulated and maintained under this Act;

(h) "Police" means the Khyber Pakhtunkhwa Police;

(i) "prescribed" means prescribed by rules;

(j) "Provincial Police Officer" means the Provincial Police Officer of Khyber Pakhtunkhwa Police;

(k) "public agency" means any department of Government, attached department, public authority, commission or autonomous body, setup under any statutory instrument, or public sector company or body corporate, owned, controlled or financed by Government;

(l) "repealed regulation" means the Federal "Levies Force Regulation, 2012, repealed under section 15 of this Act;

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Malakand
Sup. ...
Malakand ...

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- (m) "rules" mean rules made under this Act; and
(n) "Schedule" means the Schedule appended to this Act.

3. Reconstitution and maintenance of Levies Force.---(1) On commencement of this Act, the Levies Force shall be re-constituted and maintained by Government in accordance with the provisions of this Act and shall be known as the Khyber Pakhtunkhwa Levies Force, consisting of-

- (a) the Director General;
(b) the Deputy Director General;
(c) the Commandant; and
(d) all existing strength of members of the Levies Force working in the merged districts and sub-divisions, as specified in the Schedule.

(2) The Director General, Deputy Director General and the Commandant shall be the officers of the Police.

(3) The District Police Officer shall be assigned the additional charge of the Commandant in the same district.

(4) The Regional Police Officer shall be assigned the additional charge of the Deputy Director General in their Police Region.

(5) The Deputy Director General, who shall be appointed by Government, in consultation with the Provincial Police Officer, in such manner and on such terms and conditions as may be prescribed.

Explanation: For the purpose of this section, Regional Police Officer and District Police Officer shall have the same meanings as are given to them, respectively, in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

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

(2) The general administration and operational control of the Levies Force shall vest with the Director General to be exercised by him either directly or through the Commandant in the district.

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

(2) Without prejudice to the generality of the forgoing policing powers under subsection (1), the Levies Force shall perform such institutional or organizational functions and duties as provided under the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

6. Liabilities of officers and members of the Levies Force.---(1) It shall be the duty of every member of the Levies Force to obey and execute all lawful orders and instructions, issued to him by the Commandant or any other officer authorized by him in this behalf to issue such orders and instructions.

Attested
Superintendent
Malakand
Malakand

(2) The Levies Force shall be an essential service and every member thereof shall be liable to serve whenever he is required to serve by the Director General.

7. **Constitution of Selection and Promotion Committees.**---Government shall notify the Selection and Promotion Committees for recruitment and promotion of employees of the Levies Force.

8. **Postings, transfers and distribution of the Levies Force.**---(1) The Commandant shall be competent to post and transfer members of the Levies Force within the district.

(2) The Director General shall be competent to post and transfer members of the Levies Force from one district to another.

(3) Subject to the decision of the Department, a sufficient number of members of the Levies Force shall be placed at the disposal of the District Administration in performing its legally mandated functions.

9. **Absorption.**---(1) Notwithstanding anything, contained in any other law for the time being in force, the members of the Levies Force may be absorbed in the Police, subject to the procedure as may be determined by Government.

(2) Until their absorption in the Police, the members of the Levies Force shall be governed by their existing terms and conditions of service under the Federal Levies Force (Amended) Service Rules, 2013.

10. **Assistance and support to Government functionaries.**---On the requisition of the District Administration, the Commandant shall provide assistance and support to the District Administration and Heads of all public agencies in the District, required for performing their official duties.

11. **Power to make rules.**---Government may make rules for carrying out the purposes of this Act.

12. **Act to override other laws.**---The provisions of this Act shall be in force notwithstanding anything repugnant or contrary contained in any other law for the time being in force.

13. **Indemnity.**---Except as otherwise expressly provided in this Act, no suit, prosecution or other legal proceedings shall lie against any member of the Levies Force, Government or any other authority for anything which is done in good faith or intended to be done under this Act or the rules.

Explanation: The phrase "good faith" shall have the same meaning as given to it in section 52 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

14. **Removal of difficulties.**---If any difficulty arises in giving effect to any of the provisions of this Act, the Department may notify a committee to take a decision not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

15. **Repeal and savings.**---(1) The Federal Levies Force Regulation, 2012 and the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ordinance No. III of 2019) are hereby repealed.

Attested
Superintendent
Malakand Levies Malakand

(2) Notwithstanding the repeal of the Federal Levies Force Regulation, 2012, under sub-section (1), the Federal Levies Force (Amended) Service Rules, 2013 shall continue to remain in force and the terms and conditions of service of all the members of the Levies Force shall be governed thereunder until new rules are made under this Act.

(3) Anything done, action taken, rule made or notification or orders issued under the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ord. No. III of 2019), and the Federal Levies Force Regulation, 2012, shall be deemed valid and the same shall not be called in question in any Court of law.

SCHEDULE
[see section-1(3)]

Part-A

S.No.	District.
1.	Bajaur.
2.	Mohmand.
3.	Khyber.
4.	Orakzai.
5.	Kurram.
6.	South-Waziristan.
7.	North-Waziristan.

Part-B

S.No.	Sub-Division.
1.	Hasan Khel in district Peshawar.
2.	Darra Adam Khel in district Kohat.
3.	Bettani in district Lakki Marwat.
4.	Wazir in district Bannu.
5.	Jandola in district Tank.
6.	Darazinda in district Dera Ismail Khan.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMJAD ALI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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

A. I. Pestel
J. J. J. J.
Supintendent
Malakand - Malakand



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME AND TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar, dated the 21-10-2021

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

SCHEDULE-III

S. No.	Name of the Post / Rank	Length of Service / Age
1	Subedar Major (BS-16)	Thirty Seven Years of service or Three Years' Service as Subedar Major or Sixty Years of age whichever is earlier.
2	Subedar (BS-14)	Thirty five Years of service or Five Years' service as Subedar or Sixty years of age whichever is earlier.
3.	Naib Subedar (BS-11)	Thirty Three Years of Service or Seven Years' service as Naib Subedar or Sixty Years of age whichever is earlier.
4	Hawalدار (BS-09)	Thirty one years of service or fifty one year of age whichever is earlier.
5	Naik (BS-08)	Twenty nine years of service or forty nine years age whichever is earlier.
6	L/Naik (BS-08)	Twenty seven years of service or forty seven years age whichever is earlier.
7	Sepoy (BS-07)	Twenty five years of service or forty five year of age whichever is earlier.

SCHEDULE-I

S.No	Post/ Rank	Eligibility for Promotion	Promotion Quota	Direct Quota	Qualification
1	Subedar Major (BS-16)	02 years' service as Subedar Or Total 21 years of service	100%		
2	Subedar (BS-14)	02 years' service as Naib Subedar Or Total 19 years of service	100%		
3	Naib Subedar (BS-11)	04 years' service as Hawaldar Or Total 17 years of service	100%		
4	Hawalدار (BS-09)	03 years' service as Naik Or Total 13 years of service	100%		
5	Naik (BS-08)	03 years' service as Lance Naik Or Total 08 years of service			
6	L/Naik (BS-08)	03 years' service as Sepoy			
7	Sepoy (BS-07)			100%	SSC
8	Head Armourer (BS-5)	03 years' service as Assistant Armourer	100%		SSC Qualification with certificate of Armourer
9	Assistant Armourer (BS-1)			100%	SSC Qualification with certificate of Armourer

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

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Attested
Superintendent
Malakand District Malakand

Copy forwarded to the:-

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

Section Officer (Police-II)

21/10/2021

A. C. S. S. S.

Sup. S. S. S.
Malakand Division Malakand