

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1538 of 2023

Service Appeal No.1538 of 2023

Muhtamin Khan S/o Hamesh Khan R/o Dehri Aaladhand Tehsil Batkhela, District Malakand

.....Appellant

-----Versus-----

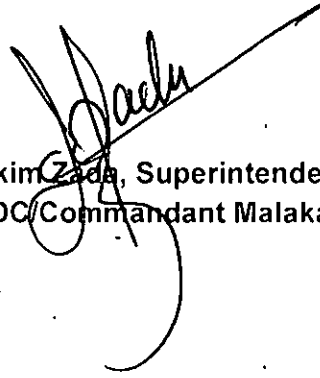
1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
3. The District Police Officer, District Malakand.
4. The Deputy Commissioner/Commandant Malakand Levies, District Malakand.

.....Respondents

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Deponent



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

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

Service Appeal No.1538 of 2023

Muhtamin Khan S/o Hamesh Khan R/o Dehri Aaladhand Tehsil Batkhela, District Malakand
.....Appellant

-----Versus-----

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
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.....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 OF THE APPELLANT BEING 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 DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

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 correct. The appellant was appointed as Sepoy in Bps-01 in Malakand Levies and was performing his duty as Naib Subedar.
2. It is correct. The Levy service rules 2013 were promulgated in February, 2013 further amended on 12-12-2013, wherein Rule 17 deals with retirement age of the levy personnel. (Copy of service rules, 2013 as Annexure-A)
3. It is incorrect. The Levies Force of Tribal Districts (Ex-FATA agencies) were absorbed into Khyber Pakhtunkhwa Police. However, the Force of Malakand Levies is not included in the said Act, 2019 and not absorbed into Khyber Pakhtunkhwa Police. Only Seven (7 agencies (Bajaur, Mohmand, Khyber, Orakzai, Kurram, South Waziristan and North Waziristan) of Tribal district the erstwhile FATA, Levy Force has been merged in Khyber Pakhtunkhwa Police. This Act relates to Districts of erstwhile FATA Levies Force. Furthermore, Deputy Commissioner Malakand is still the Commandant of Malakand Levies Force. (Copy of Act, 2019 as Annexure-B). The services of the appellant were not absorbed into the Khyber Pakhtunkhwa Police and Malakand Levies Force is governed by Levy (Amended) Service rules 2013, which are also relied upon judgment of Peshawar High Court Peshawar dated: 29-11-2022 the relevant Para of the said judgment is reproduced below:

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

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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.4 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:-

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4. The Deputy Commissioner/Commandant Malakand Levies, 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.4.


Deputy Commissioner/
Commandant
Malakand Levies Malakand





Amended "A" 5

NOTIFICATION

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

Rule-4(2) Schedule-I

SCHEDULE-I

See Rule 4 (2)

A. Uniformed Force

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

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

SCHEDULE-III

Rule-17(Retirement)

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

P.T.O


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

Secretary to Government of Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Ends No. & dated of even.

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

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


Section Officer (Levies)

SCHEDULE -III
See Rule 17

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

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EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

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-67/2019/7004.— The Khyber Pakhtunkhwa Khasadar 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 KHASADAR FORCE ACT, 2019. (KHYBER PAKHTUNKHWA ACT NO. XXXIV 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 regulate and maintain the Khasadar Force previously working in the erstwhile Federally Administered Tribal Areas and now in the merged districts of the Province of the Khyber Pakhtunkhwa.

WHEREAS after Constitution (Twenty-fifth Amendment) Act, 2018 (Act No. XXXVII of 2018), the erstwhile Federally Administered Tribal Areas were merged in the Province of the Khyber Pakhtunkhwa, and the special provisions for the governance system in the said areas were omitted through said amendment, leading to the extension of the executive authority of the Province of the Khyber Pakhtunkhwa to the said areas;

AND WHEREAS the Khasadar Force, which was established in the erstwhile Federally Administered Tribal Areas through Executive Orders and instructions, for management of the said areas within the framework of territorial and collective responsibility, has now lost their legal status, for working in the merged districts and sub-divisions;

AND WHEREAS it is in public interest to allow the Khasadar Force to continue their functions for better public order, peace and security in the merged districts and sub-divisions and to achieve the objectives, it is expedient to give legal status to the Khasadar Force in the merged districts and sub-divisions, and to revisit their 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 Khasadar Force Act, 2019.

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

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

(4) It shall come into force at once.

2. **Definitions.**---In this Act, unless the context otherwise requires:-

(a) "Commandant" means the District Police Officer, as defined in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. 11 of 2017);

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

(c) "District Administration" means the Deputy Commissioner, Additional Deputy Commissioner, Assistant Commissioner, Additional Assistant Commissioner and their subordinate staff in the district;

(d) "District Police Officer" means Head of the Police, under section 21 of the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. 11 of 2017);

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

(f) "Khasadar Force" means the Khasadar Force, constituted through executive orders, for the erstwhile Federally Administered Tribal Areas and now re-constituted and maintained by Government under section 3 of this Act;

(g) "prescribed" means prescribed by rules;

(h) "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;

(i) "rules" mean rules made under this Act; and

(j) "Schedule" means Schedule appended to this Act.

3. **Re-constitution, regulation and maintenance of the Khasadar Force.**---(1) On commencement of this Act, the Khasadar Force shall be re-constituted, regulated and maintained by Government in accordance with the provisions of this Act and shall be known as the Khyber Pakhtunkhwa Khasadar Force, consisting of all existing strength of its members.

(2) The Khasadar Force shall be organized in senior ranks and junior ranks officers and officials.

(3) The senior rank officer shall consist of Commandant, who shall be District Police Officer, having additional charge of the Commandant in the district, while the junior ranks shall consist of the following:

- (a) Subedar Major;
- (b) Subedar;
- (c) Naib Subedar;
- (d) Havaldar; and
- (e) Khasadar.

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

(2) The general administration and operational control of the Khasadar Force shall vest with the Commandant in the district.

5. **Method of recruitment.**---Subject to other provisions of this Act, recruitment in the Khasadar Force shall be made in the prescribed manner:

Provided that initial recruitment shall be made only in the rank of Khasadar:

Provided further that Government shall specify committee for recruitment and promotion of members of the Khasadar Force:

Provided also that members of the Khasadar Force may be absorbed in the Khyber Pakhtunkhwa Police in accordance with prescribed procedure.

6. **Powers and duties of the Khasadar Force.**---(1) Notwithstanding anything contained, in any other law for the time being in force, the Khasadar Force shall have 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 Khasadar Force shall perform such institutional or organizational functions and duties as are provided in the Khyber Pakhtunkhwa Police Act, 2017 (Khyber Pakhtunkhwa Act No. II of 2017).

7. **Postings, transfers and distribution of the Khasadar Force.**---(1) The Commandant shall be the authority for posting and transfer of members of the Khasadar Force within the district.

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

8. **Liability of Khasadar Force.**---It shall be the duty of every member of the Khasadar Force to obey and execute all lawful orders and instructions, issued to him by the Commandant.

9. **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.

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

11. **Act to override other laws.**---The provisions of this Act shall have overriding effect, notwithstanding anything contained in any other law, on the subject, for the time being in force.

12. **Actions taken in good faith.**---No suit, prosecution or other legal proceedings shall lie against Government, any authority exercising powers under this Act or any member of the Khasadar Force for anything done in good faith under this Act or any rule made thereunder or matters specified in pursuance of this Act.

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).

13. **Removal of difficulty.**---(1) 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.

(2) Save as otherwise specifically provided, nothing in this Act, or any repeal effected thereby shall affect or be deemed to affect-

- (a) the existing terms and conditions of service of the Khasadar Force unless amended through a substitute rule or instrument;
- (b) the validity of anything done, action taken, investigations or proceedings commenced, orders issued, appointments made, directions given, proceedings taken or instruments executed or issued, under or in pursuance of any rule or regulatory instrument repealed or amended by this Act and any such thing, action, investigation, proceeding, order, appointment, direction, or instrument suit, right or claims shall, if in force at the time of commencement of this Act and not inconsistent with any of the provisions of this Act, shall continue to be in force, and have effect as if it were respectively done, taken, commenced, issued, made, directed, given, executed or issued under this Act; and
- (c) anything done, action taken, rule made or notification or orders issued under the Khyber Pakhtunkhwa Khasadar Force Ordinance, 2019 (Khyber Pakhtunkhwa Ord. No. IV of 2019) shall be deemed valid and the same shall not be called in question in any Court of law.

14. Repeal--- the Khyber Pakhtunkhwa Khasadar Force Ordinance, 2019 (KP Ord. No. IV of 2019) is hereby repealed.

SCHEDULE
[see section 1(3)]

Part-A

S No.	District.
1.	Bajaur
2.	Mohmand
3.	Khyber
4.	Orakzai
5.	Korrum
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

1/Naik

Amir Khan

FROM : KPK HD ME

FAX NO. : 0919210051

22 Oct. 2021 10:45AM P2



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	Hawaldar (BS-09)	Thirty one years of service or fifty one year of age whichever is earlier.
5	Naik (BS-08)	Twenty nine years of service or forty nine years age whichever is earlier.
6	L/Naik (BS-08)	Twenty seven years of service or forty seven years age whichever is earlier.
7	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-15)	02 years' service as Subedar Or Total 21 years of service	100%		
2	Subedar (BS-14)	02 years' service as Naib Subedar Or Total 19 years of service	100%		
3	Naib Subedar (BS-11)	04 years' service as Hawaldar Or Total 17 years of service	100%		
4	Hawaldar (BS-09)	05 years' service as Naik Or Total 13 years of service	100%		
5	Naik (BS-08)	05 years' service as Lance Naik Or Total 08 years of service			
6	L/Naik (BS-08)	05 years' service as Sepoy			
7	Sepoy (BS-07)			100%	SSC
8	Head Armourer (BS-5)	05 years' service as Assistant Armourer	100%		SSC Qualification with certificate of Armourer
9	Assistant Armourer (BS-1)			100%	SSC Qualification with certificate of Armourer

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

Copy forwarded to the:-

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


Section Officer (Police-II)

21/10/2021