

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Restoration Appeal No. 354-2023 in Service appeal No. 1030/2018 and Execution Petition No. 98/2022.

Shah Faisal Khan s/o Khan Badshah r/o Qalagai (Wari) Tehsil Wari District Dir Upper
.....(Appellant/Petitioner)

Versus

- 1) Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa, at Peshawar.
- 2) Secretary Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department Khyber Pakhtunkhwa, 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)

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Raza Ullah



Superintendent DC Office
Upper Dir
MOB# 03065748800

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

(1)

Restoration Appeal No. 354-2023 in Service appeal No. 1030/2018 and Execution Petition No. 98/2022.

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- 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)

AFFIDAVIT

I, Raza Ullah Superintendent, office of the Deputy Commissioner/Commandant Dir Levies District Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the accompanying Para wise Comments on behalf of Respondent No. 01, 02, 03 & 04 are true and correct to the best of my knowledge and behalf that nothing has been concealed from this Honorable Court.



Deponent

CNIC 15702-2500720-3
MOB# 03065748800

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

Restoration Appeal No. 354-2023 in Service appeal No. 1030/2018 and Execution Petition No. 98/2022.

Shah Faisal Khan s/o Khan Badshah r/o Qalagai (Wari) Tehsil Wari District Dir Upper
.....(Appellant/Petitioner)

Versus

- 1) Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa, at Peshawar.
- 2) Secretary Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department Khyber Pakhtunkhwa, 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)

**APPLICATION FOR RESTORATION OF THE ABOVE MENTION
EXECUTION PETITION NO. 98/2022 IN JUDGMENT PASSED BY THIS
HONORABLE TRIBUNAL IN SERVICE 1030/2018 DATED 20-10-2021 WHICH
HAS NOT BEEN PROPERLY IMPLEMENTED IN PROPER AND TRUE
MANNER BY THE RESPONDENT DEPARTMENT IN LETTER AND SPIRIT.**

JOINT PARAWISE COMMENTS ARE AS UNDER:-

PRELIMINARY OBJECTIONS:-

- 1) That the appellant has no cause of action or locus standi.
- 2) That the appellant has been estopped by his own conduct to file the application.
- 3) That the application is not maintainable under Section-4 of the service Tribunal Act-1974.
- 4) That this Honorable Tribunal has no jurisdiction to entertain the application.
- 5) That the appellant has not come to the Tribunal with clean hand.

RESPECTFULLY SHEWETH


- 1) **Correct** relates to record.
- 2) **Incorrect.** On acceptance of the judgment dated 20-10-2021 passed by the honorable Provincial Service Tribunal Khyber Pakhtunkhwa in service appeal No. 1026 to 1030/2018 this office approached Law Department Khyber Pakhtunkhwa through Home & Tribal Affairs Department Khyber Pakhtunkhwa to determine the suitability of the judgment of the Provincial Service Tribunal Khyber Pakhtunkhwa whether to challenge the same in the appellate court or otherwise. Consequently the Law & Home & Tribal Affairs Department Khyber Pakhtunkhwa directed this office to challenged the said judgment in the august Supreme Court of Pakistan, hence as per directions CPLAs have been filled in the honorable Supreme Court of Pakistan which are still pending for disposal. As for as the question of execution petition is concerned on the direction of the honorable Tribunal conditional re-instatement order of the applicant have been issued on 01-07-2022 (copies attached at Annexure A).
- 3) **Incorrect.** After issuance of the conditional re-instatement order of the applicants this office approached Home & Tribal Affairs Department Khyber Pakhtunkhwa with the


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request to take up proper case with Finance Department Khyber Pakhtunkhwa to create 05 numbers of supernumerary posts for the conditionally re-instated subidars as no posts of subidar is lying vacant in Dir Levies (Provincial). Consequently meeting was convened in the Home & Tribal Affairs Department Khyber Pakhtunkhwa Peshawar and during the said it was decided that "In current circumstances, creation of supernumerary posts is not an easy task, it was therefore decided that an analogous case with reference to District Malakand has been sent to Law Department for seeking opinion of AG. After getting the opinion of AG, further case will be considered (copy enclosed at Annexure B)


- 4) As explained at para No. 03 above.
- 5) As explained at para No. 02 & 3 above.

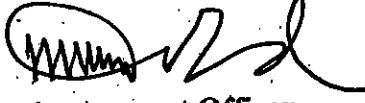
In light of the facts explained above, it is humbly prayed that the application filed by the applicants does not merit consideration, may kindly be dismissed with cost please.


Chief Secretary
Khyber Pakhtunkhwa Peshawar
Respondent No. 01


Deputy Commissioner/
Commandant Dir Levies
Upper Dir
Respondent No. 3

**DC/Commandant
Dir Levies**


Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa Peshawar
Respondent No. 02 Home Secretary,
Khyber Pakhtunkhwa


District Account Officer
Dir Upper
Respondent No. 4

**District Account Officer
Dir Upper**

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①

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 721-P /2021

Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar & Others

-----PETITIONERS

VERSUS

Shah Faisal Khan

-----RESPONDENT

<i>Appeal from</i>	:	<i>Khyber Pakhtunkhwa Service Tribunal, Peshawar</i>
<i>Counsel for Petitioner</i>	:	<i>Advocate General, KPK, Peshawar</i>
<i>Instituted by</i>	:	<i>Moin-ud-Din Humayun, AOR</i>

ATTESTED


Distt. Record Room
Deputy Commissioner Office
Dir Upper.

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①

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar & Others

-----**PETITIONERS**

VERSUS

Shah Faisal Khan

-----**RESPONDENT**

Appeal from : *Khyber Pakhtunkhwa Service Tribunal,
Peshawar*
Counsel for Petitioner : *Advocate General, KPK, Peshawar*
Instituted by : *Moin-ud-Din Humayun, AOR*

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CERTIFIED that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

ATTESTED


Deputy Commissioner
Dir Gooch

(A)

**IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

CPLA NO. _____/2021

Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar & Others

PETITIONERS

VERSUS

Shah Faisal Khan

RESPONDENT

CONCISE STATEMENT

1- Subject matter and the law Service/Setting Aside Notification dated
26/12/2016

Court / Forum	Date of a) Institution b) Decision	Who filed it and with what result
KPK Service Tribunal Peshawar	a) 17/08/2018 b) 20/10/2021	Respondent filed service appeal which has been accepted
Points noted in the impugned Judgment	Treatment of points in the impugned judgment	
Learned Counsel for the respondent contended that, the impugned notification is discriminatory in favor of the respondent, 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 the age of 60 years, whereas the respondent being a Subedar is subjected to retirement from his service at the age of 41 which even is not in the interest of the petitioners retiring quite an energetic and young officer at such earlier stage; that terms and conditions of service could not be unilaterally altered by the employer to the disadvantage of the employee. That the respondent has got legitimate expectancy and vested rights to continue his service till the age of superannuation and forcing the respondent to retire under the impugned notification renders him to live in lurch and despair; that the respondent was promoted as Subdear prior to the impugned notification and he is supposed to be dealt with in accordance with that service rules, under which he was promoted; that the impugned notification is having no	the Provincial Government was in the process to examine and remove the anomaly but in the meanwhile the respondent was retired from service on completion of five year service as Subdear 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 age of retirement and contrary to the fundamental rights of the respondent guaranteed by the Constitution, hence amendments were brought vide notification dated 14/07/20-14 whereupon schedule-IV was deleted and provided that all uniformed force shall retire from service on attaining the	

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[Signature]
Distt. Record Room
Commissioner Office
Dir. H-sec.

retrospective effect, therefore the same is ineffective upon the rights of the respondents of continuing his service till the age of 60 already accrued to him. That the impugned notification by altering the terms and conditions of the service of the respondent adverse to his rights already accrued to him, is unwarranted and nullity in the eye of law.

Learned Assistant Advocate General contended that the impugned notification was issued on 26/12/2016, whereas the respondent 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. The learned Assistant Advocate General referred to Rule-3 of the Appeal Rules 1986 which provides for filing of departmental appeal within 30 days of issuance of the impugned order whereas the respondent has filed such appeal with delay of more than one year; that the departmental appeal was filed jointly by the respondent 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 malafide could not be assailed.

age of superannuation i.e. Sixty 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 respondent adversely affecting their rights already vested in them and have ceased damage to the respondent which was unwarranted and nullity in the eye of law. In view of the foregoing discussion, the instant appeal is accepted. The respondent as well as other similarly placed employees stand reinstated in service, who will retire on attaining age of 60 years or they may opt for retirement after completion of 25 years regular service.

LAW/RULING ON THE SUBJECT

FOR


- 1- Constitution of the Islamic Republic of Pakistan, 1973
- 2- Khyber Pakhtunkhwa Levy Force Rule, 2012 & 2013 and 2016

CERTIFICATE:

Certified that I, myself prepared the above concise statement which is correct.

(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
For Government

ATTESTED


Deputy Commissioner
Dir Upper

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2021

1. Government of Khyber Pakhtunkhwa through Chief Secretary, 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)
4. District Account Officer District Dir Upper

PETITIONERS

VERSUS

Shah Faisal Khan S/o Khan Badshah r/o Qallagai (Wari) Tehsil Wari, District Dir Upper, presently Subedar (Regimental No.-5) Dir Levies District Dir Upper

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER
ARTICLE 212(3) OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973 AGAINST THE
IMPUGNED JUDGMENT/ ORDER OF THE HON'BLE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR DATED 20/10/2021 PASSED IN SERVICE
APPEAL NO.1030/2018

RESPECTFULLY SHEWETH:

Substantial questions of law of general public importance and grounds, inter alia, which fall for determination of this august Court are as under:-

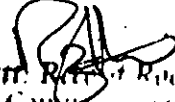
1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does not suffer from material illegality, factually and legally incorrect and requires interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?

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District Account Officer
Deputy Commissioner's Office
Dir Upper.

3. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is in utter disregard of levy force amendment Rule, 2016?
4. Whether the respondent does not fall within the purview of civil servant and his service appeal was not maintainable before the Hon'ble Khyber Pakhtunkhwa Service Tribunal without filing departmental appeal?
5. Whether the respondent does not belong to Levy Force and not fall within the definition of Civil Servant therefore the judgment of Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is without jurisdiction?
6. Whether the post of Subedar in Levy Force is not in the Schedule-III of Rule 2013 & 2016 wherein it has been specifically mentioned that whoever served till 35 years or 3 years as Subedar would be retired whichever is earlier?
7. Whether the respondent was rightly retired from service on completion of his service and tenure prescribed by Rules, 2016?
8. Whether reducing and enhancing tenure/period of retirement from post is not the policy decision of government which exclusively falls within the domain of government and no employee could claim the retention in service beyond the period prescribe by rules?
9. Whether the employees of government cannot claim as matter of right to enhance the period of service or reduce the same in matter of retirement?
10. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?
11. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly followed, applied and interpreted the law in the subject case?
12. Whether joint service appeal of respondent was not maintainable as the Khyber Pakhtunkhwa Service Tribunal Rule 1986 provide the each individual shall file separate appeal for his cause, moreover, the appeal of respondent was barred by time?

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 Deputy Commissioner's Office
 Dir. Hqrs.

13. Whether the respondent has challenged the vires of notification dated 26-12-2016 whereby rules has been amended?
14. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has declare the amendment made through notification dated 26-12-2016 in the PATA Provincial Levies Force Rules, 2015 as ultra vires?
15. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal is right to give retrospective effect to the notification dated 14-07-2020 whereby PATA Provincial Levies Force, Rules, 2015 has been amended?
16. Whether the amended rules are not with immediate effect?
17. Whether the petitioners have not acted in accordance with rules applicable at the time of retirement of the respondent?

FACTS

- II- Facts relevant to the above points of law, inter alia, are as under:-
1. That the respondent was appointed as Sepoy in Levy Force on 22-11-1999 and was subsequently promoted to the rank of Subedar vide order dated 11-11-2014.
 2. That Provincial Govt. framed PATA Levies Force Service Rules, 2012 under the Regulation of 2012 wherein, rule 16 provide for retirement of member of force.
 3. That subsequently PATA Provincial Levies Force Regulation, 2014 was promulgated and thereunder PATA Provincial Levies Force Rules, 2015 were framed, wherein, Rule 16 deals with retirement of members of uniformed force.
 4. That as per rules, 2015 the respondent date of retirement was 11-11-2019 but in the meantime the Govt. of Khyber Pakhtunkhwa further amended the ibid rules vide notification dated 25-08-2016.
 5. That lastly vide Notification No. 57286 dated 26-12-2016 the Provincial Govt. amended the Schedule-IV of the ibid rules, 2015.

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Dir Lower.

- 6. That the respondent being aggrieved of the amending notification No. 57286 dated 26-12-2016 preferred Service Appeal No. 1030/2018 before the Khyber Pakhtunkhwa, Service Tribunal Peshawar without first filing departmental appeal.
- 7. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted and allowed the Service Appeal by reinstating the respondent to his service vide impugned judgment dated 20/10/2021.
- 8. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa, Service Tribunal, Peshawar dated 20/10/2021 in Service Appeal No.1030/2018, prefer this CPLA before this august Court.
- 9. That the petitioners seek leave to appeal against the impugned judgment / order dated 20/10/2021 in Service Appeal No.1030/2018.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 20/10/2021 in service appeal No.1030/2018 may graciously be granted.

(Moin-ud-Din Humayun)
 Advocate-on-Record
 Supreme Court of Pakistan
 For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210300)

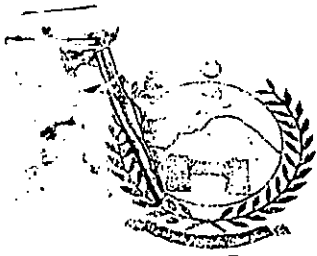
CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

NOTE: Complete record of the case has been filed in Main case i.e CPLA No. _____/2021 Govt. of Khyber Pakhtunkhwa through Chief Secretary and others Versus Shah Rafi-ud-Din being common judgment and common question of law.

Advocate-On-Record

ATTESTED

[Signature]
 Distr. Room
 Deputy Com. in Office
 Dir. Gen.



OFFICE OF THE
DEPUTY COMMISSIONER/COMMANDANT DIR
LEVIES UPPER DIR



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No: 8563 /DC/LHC/C. Cases

Dated Dir the 06/06/2023

To:

The Section Officer (L&K),
Home & Tribal Affairs Department,
Khyber Pakhtunkhwa Peshawar.

Subject:
Memo:

CREATION OF SUPERNUMERARY POSTS.

Reference your office letter No. SO(L&K)/MKD/399-405 dated 31-05-2023 on the subject noted above.

The requisite information is sent herewith on the attached profarma as desired please.

Commandant Dir Levies/
Deputy Commissioner
Dir Upper.

ATTESTED

District Registrar
Deputy Commissioner's Office
Dir Upper.

E BRIEF/WORKING PAPER REGARDING CREATION 05 NUMBER OF SUPERNUMERARY POSTS FOR E-INSTATED SUBIDARS OF DIR LEVIES (PROVINCIAL).

n-	Father Name	DOB	DOA	Date of promotion to different ranks		Date of retirement	Reason of retirement	Details of Court Judgments
	Muhammad Din	11-03-1976	01-12-1999 (copy of the appointment order is attached at Annexure A)	Lance Naik	22-03-2006	27-02-2019 (copy enclosed at Annexure C)	On completion of 05 years rank tenure as Subidar (copy of the relevant Section of Service Rules is Enclosed at Annexure D)	<p>After retirement from service the Ex officials concerned challenged the Levy Service Rules and the retirement order in the honorable Service Tribunal Khyber Pakhtunkhwa Peshawar and the honorable Court disposed off the said service appeals on 20-10-2021. The Home & Tribal Affairs Department after consultation with Law Department challenged the judgment passed by the honorable Service Tribunal in the august Supreme Court of Pakistan which is still pending for disposal. As the CPLA was filled in the august Supreme Court of Pakistan compliance of the judgment of the honorable service Tribunal was not made resultantly the individual concerned filed EPs before the Service Tribunal and on the basis of the same they have been re-instated on conditional basis. At that time no vacant posts of subidar was available therefore this office has taken up the case with Home Department for creation of 05 numbers of supernumerary posts (copies enclosed at Annexure E, F & G). It is further added that this office has sought guidance from the Home &</p>
				Naik	19-02-2009			
				Hawaladar	14-07-2010			
				Naib Subidar	08-09-2010			
				Subiar	19-11-2013			
				Copies enclosed at Annexure B				

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Deputy Commr. Office
Dir Upper.



14

GOVERNMENT OF KHYBER PAKHTUNKHWA
Home & Tribal Affairs Department
Levy & Khassadar Section

No. SO(L&K/HD/Upper Dir/157-52
Dated: 21.08.2023

To

The Deputy Commissioner/Commandant
Upper Dir

Subject: MINUETS OF THE MEETING WITH DEPUTY COMMISSIONER /
COMMANDANT LEVY FORCE UPPER DIR ON VARIOUS ISSUES OF
LEVY FORCE

Dear Sir,

I am directed to enclose herewith minutes of the meeting held on 21.7.2023 under the Chairmanship of Additional Secretary (P/L&K) in Home Department for information /necessary action, please.

Yours Sincerely,

(Niaz Muhammad)
Section Officer (L & K)

Copy to:

PS to Secretary, Home & TAs Department, Peshawar Khyber Pakhtunkhwa.

Section Officer (L & K)

4467
25-8-23

25/8/23

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Deputy Comdr. Office
Dir Upper Dir.

**MINUTES OF THE MEETING WITH DEPUTY COMMISSIONER UPPER DIR ON
VARIOUS ISSUES OF LEVY FORCE**

To discuss the following points related to Levy Force Upper Dir, a meeting under the Chairmanship of Additional Secretary (Police/L&K) was held on 21.7.2023 at 2:00 hours in Home Department.

1. Creation of posts of Subedar BPS-14 and Naib Subedar BPS-11 in Levy Force Upper Dir.
2. Disparity in Pay Scale of Naiks and Lance Naiks BPS-08 due to difference of ranks/BPS in prevailing levy rules and budget book of Finance Department. 9budget book has Police ranks with no rank of BPS-8).
3. Creation of 05 supernumerary posts of Subedar BPS-14 in Levy Force (Provincial) Upper Dir 9for adjustment 05 Subedar as per the judgment of Service Tribunal Khyber Pakhtunkhwa Peshawar.

The following attended the meeting

1. Deputy Commissioner Upper Dir
2. Deputy Secretary(Levy & Khassadar)
3. Section Officer(Levy & Khassadar)
4. Representative of Finance Department
5. Head Clerk Levy Force Upper Dir.

The above mentioned points were thoroughly discussed and the following decisions were taken by the chair on each point.

S.No.	Points of the agenda	Discussion & Decision
1.	Creation of posts of Subedar BPS-14 and Naib Subedar BPS-11 in Levy Force Upper Dir.	The issue was discussed in detail and it was realized that this will lead to financial implication, it was therefore, decided that compete case with justification and financial implication will be submitted by the Deputy Commissioner/Commandant Levy Force Upper Dir for onward submission of the case to Finance Department
2.	Disparity in Pay Scale of Naiks and Lance Naiks BPS-08 due to difference of ranks/BPS in prevailing levy rules and budget book of Finance Department 9budget book has Police ranks with no rank of BPS-8).	It was discussed that as the budget book has no Police Rank of BPS-08 that is why this kind of disparity is causing problems and also difficultly for withdrawal of salary, it was therefore, decided that a meeting is going to be held on 24.7.2023 in Finance Department regarding the similar issue of Malakand Levy Force and case of Dir Upper will also be discussed in the meeting of Finance Department.
3.	Creation of 05 supernumerary posts of Subedar BPS-14 in Levy Force (Provincial) Upper Dir for adjustment 05 Subedar as per the judgment of Service Tribunal Khyber Pakhtunkhwa Peshawar.	It was discussed that in the current circumstances, creation of supernumerary posts is not an easy task, it was therefore, decided that an analogous case with reference to District Matakand has been sent to Law Department for seeking opinion of AG. After getting the opinion of AG, further the case will be considered.

The meeting ended with vote of thanks from and to the chair.

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[Signature]
 Distt. Registrar
 Home Department
 Peshawar.