

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT SWAT

Service Appeal No 1235/2016

Date of Institution... 22.11.2016

Date of decision... 05.09.2017

Bacha Hussain Ex-Constable No.465, District Police,  
District, Swat.

... (appellant)

Versus

1. The Regional Police Officer, Malakand, at Saidu Sharif,  
District Swat and another. ... (Respondents)

Mr. Imdad Ullah  
Advocate ... For appellant

Mr. Muhammad Zubair,  
District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the  
Learned Counsel for the appellant and learned District Attorney for the  
respondents heard and record perused.


FACTS

2. The appellant was retired from service vide impugned order dated  
19.10.2016 from back date i.e 03.10.2011 against which he filed  
departmental appeal which was rejected on 14.11.2016 and thereafter  
appellant brought the instant appeal on 22.11.2016. The reason for the  
impugned order is that according to the medical certificate submitted by the  
appellant at the time of entry into service his age was 28 years and if his date

of birth is considered to be correct according to the medical certificate then his age of superannuation falls on 03.10.2011.

### ARGUMENTS

3. Learned counsel for the appellant argued that medical certificate on which the authority had relied cannot be conclusive evidence of the age of the appellant as the same was not written on any scientific ground but only on the basis of appearance. That the appellant had disclosed his age as 28 years before the Medical Superintendent at the time of issuing of certificate. That the impugned order is, therefore, not sustainable in the eyes of law.



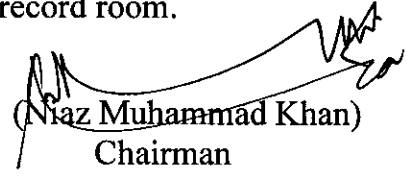
4. On the other hand the learned District Attorney argued that not only the medical certificate speaks about the age of the appellant as 28 years but his service record also affirms the same. The learned District Attorney referred to the service book of the appellant wherein the date of birth originally entered as 03.10.1951 both in figure and words. That in the figures 1 has been converted into 7. That in the words "fiftyone" is still intact. That the authority has rightly issued the impugned order.

### CONCLUSION

5. After hearing both the learned counsel for the parties and perusing the record, this Tribunal is of the view that it was necessary for the authority issuing the retirement order to have probed into the matter whether any tampering was made in the record and whether the discrepancy between letters and figures has been made intentionally and which one of the two is correct because the date of birth written in figures is in harmony with the statement of the appellant before the Medical Officer whereas the date of birth written in words is in consonance with the medical certificate. But the

authority only referred to the medical certificate in the impugned order and not touched other aspects of the matter as discussed above. Therefore, this Tribunal by accepting this appeal directs the authority that before issuance retirement order to probe the matter by taking into account all other facts including record of birth maintained at local level, if any, school record, if any, and NADRA record. The department is directed to complete the whole proceedings within a period of two months from the date of receipt of this judgment and then issue a fresh order on the basis of report failing which the appellant shall be deemed to have been reinstated in service and shall continue his service till his superannuation as alleged by him. Parties are left to bear their own costs. File be consigned to the record room.


  
(Ahmad Hassan)  
Member

  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, Swat

ANNOUNCED  
05.09.2017


09.02.2017

Appellant present in person and Mr. Khawas Khan, S>I (Legal) alongwith Mian Amir Qadar, GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 06.04.2017 at camp court, Swat.

  
Chairman  
Camp Court, Swat.

06.04.2017

Appellant in person present. Mr. Khawas Khan, S.I (legal) alongwith Mian Amir Qader, Government Pleader for respondents also present. Written reply by respondents submitted. To come up for rejoinder and arguments on 05.09.2017 before D.B at Camp Court Swat.

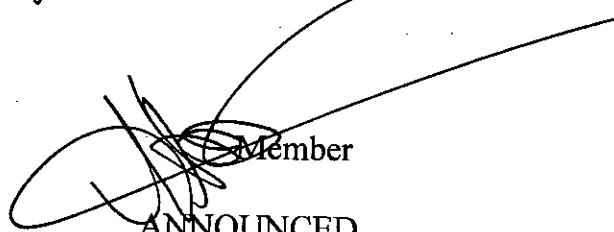
  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER  
Camp Court Swat.

05.09.2017

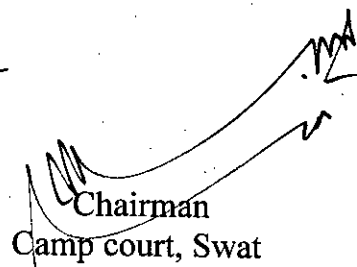
Appellant alongwith counsel and Mr. Muhammad Zubair, District Attorney alongwith Khawas Khan, Si (Legal) for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of to-day. Parties are left to bear their own costs. File be consigned to the record room.



  
Member

ANNOUNCED  
05.09.2017

  
Chairman  
Camp court, Swat

Service Appeal No. \_\_\_\_\_/2016, Bacha Hussain

08.12.2016

Learned counsel for the appellant argued that memorandum dated 14.11.2016 is in fact an order amounting to rejection of the mercy petition/departmental appeal of the appellant and as such the service appeal is maintainable.

Orders accordingly. Service appeal is therefore maintained.

Learned counsel for the appellant argued that date of birth of the appellant in service record is penning down as 03.10.1957. That vide impugned order dated 19.10.2016 appellant was retired from service w.e.f. 02.10.2011 and directions with regard to recovery of salary etc. against the appellant after the said date i.e. 02.10.2011 were also issued where-against appellant preferred departmental appeal on 04.11.2016 which was rejected on 14.11.2016 and hence the instant service appeal on 22.11.2016.

That the impugned orders are against facts and law as the appellant is to attain the age of superannuation on 02.10.2017.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 09.02.2017 before S.B at camp court, Swat. Till further orders the recovery shall not be made from the appellant.

Appellant Deposited  
Security & Process Fee

Chairman  
Camp court, Swat

The appeal of Mr. Bacha Hussain Ex-Constable No. 465 Distt. Police Swat received today i.e. on 22.11.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of rejection order of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it. Copy of order dated 14.11.2016 (Annexure-E) is not a rejection order of departmental appeal.

No. 1941 /S.T,

Dt. 22/11 /2016

*Singh*  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Aziz-ur-Rehman Adv. Swat.

Sir,

The appellant was communicated the same and informed that through the memo dated 14-11-2016 the departmental appeal has been filed. The file may please be placed before the Honourable Tribunal along with observation as the same involves urgency and illegal recovery is going to ensue, apart from premature retirement.

*Aziz-ur-Rehman*  
23/11/2016  
Advocate Swat

Sir,

The observation of this office & reply of counsel for the appellant is submitted for order please.

Hon'ble  
Chair-man

Filed before SB for  
office objection

*Hasan*  
23/11/2016  
28.11.16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Service Appeal No. 1235 of 2016

Bacha Hussain Ex-Constable No. 465, District Police, District Swat.

... Appellant

VERSUS

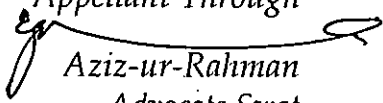
The Regional Police Officer, Malakand, at Saidu Sharif, District Swat and Other.

... Respondents

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Appellant Through

  
Aziz-ur-Rahman  
Advocate Swat

Office: Khan Plaza, Gulshone Chowk,  
Mingora Swat, Cell 0300 907 0671.

①

BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1235 of 2016

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1208

Dated 22/11/2016

...Appellant

**VERSUS**

1. The Regional Police Officer, Malakand, at Saidu Sharif, District Swat.
2. The District Police Officer, District Swat, at Gulkada.

...Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER O.B. NO. 179 DATED 19-10-2016 WHEREBY THE APPELLANT IS NOT ONLY PREMATURELY RETIRED FROM SERVICE WITH RETROSPECTIVE EFFECT FROM 02-10-2011, BUT ORDER OF RECOVERY OF SALARIES TILL HAS ALSO BEEN MADE AGAINST THE LAW AND RULES AND IS NOT SUSTAINABLE UNDER THE LAW. FEELING AGGRIEVED THE APPELLANT PREFERRED A DEPARTMENTAL APPEAL WHICH WAS DISPOSED OFF VIDE MEMO: NO. 9538/E DATED SAIDU SHARIF, THE 14-11-2016 IN A VERY MECHANICAL AND CLASSICAL MANNER HAVING NO SUCH PRECEDENT, HENCE BOTH THE ORDERS ARE LIABLE TO BE SET ASIDE.

Filed to-day  
Smr  
Registrar 22-11-16



PRAYER:

*That on acceptance of this appeal both the orders impugned may very kindly be set aside being void ab initio and reinstate the appellant till his actual date of retirement on superannuation, with all consequential benefits.*

*Respectfully Sheweth:*

Facts:

- i. That the appellant joined the Police Force back in the year 1979 as constable and since then regularly permed his duties with great zeal and vigor.*
- ii. That at the time of joining of the Police Force the date of birth of the appellant is recorded as 03-10-1957 by the authorities in the Service Book. Copy of the relevant page is enclosed as annexure "A".*
- iii. That the appellant was regularly performing his duties without any objection of any sort either by the authorities or the general public and was planning to get retired on the due date in the year 2017 by attaining the age of superannuation under the law.*
- iv. That to utter surprise a bolt from the blue fell on the appellant when he was issued his retirement order on attaining the age of superannuation vide order O.B. No. 179 dated 19-10-2016. Copy of the order dated 19-10-2016 is enclosed as Annexure "B".*

- v. That the authorities are adamant enough that in the order impugned the appellant is retired by attaining the age of superannuation retrospectively i.e. 02-11-2011 and also that recovery be made for the over payment, strange enough for the period he remained in service and performed duties till the order impugned is issued. Copies of the various "mads" are enclosed as Annexure "C", showing the duties performed by the appellant.
- vi. That feeling aggrieved from the order impugned the appellant preferred a departmental appeal to the respondent No. 1 for setting aside the order impugned a being void ab initio, but the same is filed vide memo No. 9538/E dated Saidu Sharif, the 14-11-2016 in a very classical manner and without giving any reasons or even findings as to why the order impugned is not set aside. Copy of the appeal is enclosed as Annexure "D" and that of the memo dated 14-11-2016 is enclosed as Annexure "E", respectively.
- vii. That the appellant feeling aggrieved approached this Honourable Tribunal for the redressal of his grievance on the following grounds.

Grounds:

- a. That under the law a Civil Servant is to be retired on attaining the age of superannuation, which is to be calculated from the date of birth recorded in the service book at the time of joining the service, but the same is not the case with the appellant and his age of superannuation is calculated from the sources

not finding any mention in his service record, thus the appellant has not been treated in accordance with the law and rules.

- b. That the appellant's date of birth as recorded in the service book by the authorities is 03-10-1957 and the same was lying in the custody of the respondents, yet the age of superannuation is wrongly been calculated and the appellant is relieved of his duties prematurely against the law and rules.
- c. That this is a classic case of its kind wherein not only the age of superannuation is calculated wrongly, but even strange enough the same has been done with retrospective effect.
- d. That the appellant was regularly performing his duties till the date the order impugned was passed and also received salaries legally till the same period as well. Copy of the pay roll is enclosed as Annexure "F".
- e. That the appellant has neither moved an application for early retirement nor has committed any act of commission or omission which may constitute any offence under any law, or which may render him disqualified for further service.
- f. That further strange enough when a Police Constable is to be retired on attaining the age of superannuation so under the Policy Guidelines "Promotion of Constable on Superannuation PG-4/2013 he is to be promoted C-II Head Constable,

but the same is ignored in case of the appellant without any reasons.

- g. That the respondents have misused their official authority and have used the same in a very colourful manner to the detriment of the appellant.
- h. That the respondents have used the authority not vested in them.
- i. That the appellant is wrongly been deprived of his legal and legitimate right without any reasons.

It is, therefore, very respectfully prayed that on acceptance of this appeal the orders impugned may very kindly be set aside being void ab initio and the appellant reinstated back into service with all back/consequential benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Appellant  
بچا حسين  
Bacha Hussain  
Through Counsels,  
Aziz-ur-Rahman  
Imdad  
Imdad Ullah  
Advocates Swat

6

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

Service Appeal No. \_\_\_\_\_ of 2016

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Appellant

**VERSUS**

1. The Regional Police Officer, Malakand, at Saidu Sharif, District Swat.
2. The District Police Officer, District Swat, at Gulkada.

...Respondents


**AFFIDAVIT**

It is solemnly stated on Oath that all the contents of this service appeal are true and correct to the best of my knowledge and belief and nothing has either been misstated or kept concealed before this Honourable Tribunal.

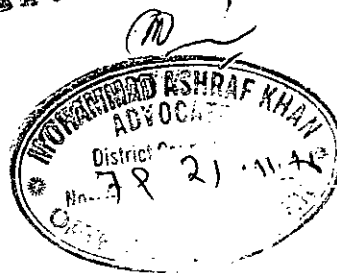
Deponent

  
Bacha Hussain

Identified By:

  
Imdad Ullah  
Advocate Swat

**ATTESTED**



BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2016

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...Appellant

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District Swat and Other.

...Respondents

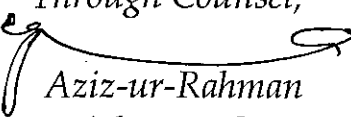
ADDRESSES OF THE PARTIES

Appellant:

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

Respondents:

1. The Regional Police Officer, Malakand, at Saidu Sharif, District Swat.
2. The District Police Officer, District Swat, at Gulkada.

Appellant  
Through Counsel,  
  
Aziz-ur-Rahman  
Advocate Swat

8

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

Service Appeal No. \_\_\_\_\_ of 2016

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Applicant/Appellant

**VERSUS**

The Regional Police Officer, Malakand, at Saidu Sharif,  
District Swat and Other.

...Respondents

**APPLICATION FOR GRANT OF INTERIM RELIEF.**

Respectfully Sheweth:

- a. That the above titled case is pending before this Honourable Tribunal, in which no date of hearing is fixed as yet.
- b. That the appellant has got prima facie case in his favour.
- c. That the balance of convenience is also in favour of the appellant.
- d. That if the interim relief in the shape of suspension of the operation of the order impugned is not stopped the appellant will suffer irreparable loss.

9

It is, therefore, very respectfully prayed that on acceptance of this application the operation of the order impugned may very kindly be suspended till the final disposal of the appeal.

Applicant/Appellant

بارشہ  
Bacha Hussain

Through Counsels,

Aziz-ur-Rahman

Imdad Ullah  
Advocates Swat



BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. \_\_\_\_\_ of 2016

Bacha Hussain Ex-Constable No. 465, District Police,  
District Swat.

...Appellant

**VERSUS**

The Regional Police Officer, Malakand, at Saidu Sharif,  
District Swat and Other.

...Respondents

AFFIDAVIT

It is solemnly stated on Oath that all the contents of  
this application are true and correct to best of my  
knowledge and belief and nothing has either been  
misstated or kept concealed before this Honourable  
Tribunal.

Deponent

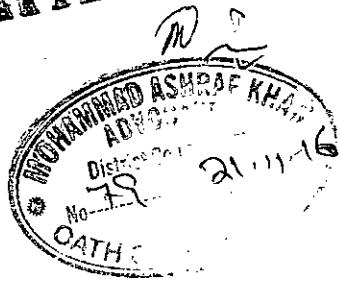
باجا حسین  
Bacha Hussain

Identified By:

Imdad

Imdad Ullah  
Advocate Swat

**ATTESIED**



Annexure "A"

11

CHARACTER AND SERVICE ROLL OF

CONSTABULARY NO. ( ) in  
Ditto ( ) in  
Ditto ( ) in

DISTRICT.  
DISTRICT.  
DISTRICT.

Name	Father's Name	Tribe or caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth	Height	Chest Measurement	Date of Enrolment	Age on Enrolment	Distinctive Marks
<i>Backal 11/11/11</i>	<i>Mohd. Amin</i>	<i>Alghoran</i>	<i>Thoran</i>	<i>De</i>	<i>Mohd. Amin</i>	<i>M. Agency</i>	<i>N.W.F.P.</i>	<i>13.10.1917</i>	<i>5' 7"</i>	<i>35 X 37</i>	<i>13.10.1917</i>	<i>28 years</i>	<i>Already tattooed</i>

Verification Roll No. \_\_\_\_\_ dated \_\_\_\_\_ received back and attached to the Fauji Misal.

Government Service prior to present employment, which is approved for pension service.

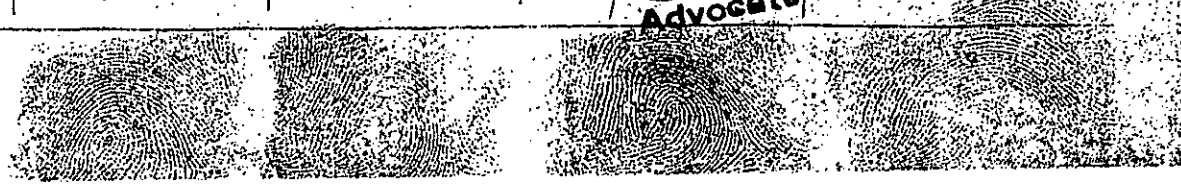
Service or department	Rank or Grade	Pay of last Appointment	From	To	PERIOD		
					Years	Months	Days
Cause of and character on discharge from above service.			Reference to orders approving above service for pension service in the Police Department.				

Agreement.—I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the purport of that section and the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are governed, have been explained to me. I agree to serve faithfully under the provisions of the said Police Act and to obey all lawful orders issued to me by my Superior Officers and undertake not to resign my appointment within three years from the date of my enrolment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861).

Signature

3. Rolled impression of fingers and thumb of left hand.

Left little	Left ring	Left middle	Left index	Left thumb
			<b>Attested</b> <i>[Signature]</i> Advocate	



۴۸

۴۸ روزنامہ ۰۶/۰۶/۱۶

۱۳

Annexure "C"

13

۴۸ روزنامہ شہر ہمدان آئی وقت ۰۵:۴۵ ۰۶/۰۶/۱۶ میں سے کریم اللہ کتیا  
۱۹۹۶ء ہمدان پر ۳۵۱/۶۶۵ سرکاری مورائیل کریم اللہ کتیا صاحب شخصیت پر ۴۶۵/۱

مورائیل گشت علاقہ ہمدان روزنامہ ہمدان

ذات

Annexure "B"

12

**ORDER**

On attaining age of superannuation i.e 60 years Constable Bacha Hussain No.465 of this district Police is hereby retired on superannuation pension in the light Medical Certificate dated 03/10/1979 placed in his Service Roll, with effect from 02/10/2011 (A.N). The overpayment of pay shall be made from his lump sump payment/gratuity with effect from 03/10/2011.

District Police Officer, Swat.

O.B. No. 179  
Dated 19.10.2016.

\*\*\*\*\*

**OFFICE OF THE DISTRICT POLICE OFFICER, SWAT.**

No. \_\_\_\_\_/E, dated Gulkada the, \_\_\_\_\_/2016.

Copies to:-

- 1) District Accounts Officer, Swat for necessary action.
- 2) Pay Officer.

District Police Officer, Swat

**Attested**

*Tanded*  
Advocate

APPROPRIATE

APPROPRIATE

APPROPRIATE



تسل ۹۹ نو ۱۰۷/۱۶

۹۹ نو ۱۰۷/۱۶  
اس وقت میں مع میرا بیٹا شہزادہ بخشیار ۱۶۹۶ یا سر علی ۲۰۰۶  
سوارہ قادری سرمدی بی بی کی ڈرائیور با چاہید ۷۶۵ بوز  
جو بائیل گشت جامع عدلیت جیڈٹ سوار علی و کنور تعما سول

جائیداد

تسل ۱۰۷/۱۶

mm. f. s. mino ۰۶۹

16-11-06

Attested

*[Signature]*  
Advocate

نفاذ منگورہ

15

رقم 59 روز نامہ 03 08 016

فصل اول

مر 59 روز نامہ اکبر علی خان ای وقت 05:45 کے روزم 03 08 016 اس وقت میں سے  
پہاڑانہ یا سرکار 2106 محمد ہادیق 351 لغرض سوبانگل منت سوار کار  
سرکاری ڈرائیور باجہ مہین 465 با فردی ہیکٹ جیک روٹا ہوں۔

صفا عالی

نقل از اہل

15

MM PSMIN

16-11-016

Attested  
Jude  
Advocate

نامہ فوریہ

متل نہ کہ دورانیہ 18 <sup>10</sup>/<sub>96</sub>

مہم جویت

درکہا ورائٹی مرد رفیق جان از وقت 05:45 بجے صبح 18 <sup>10</sup>/<sub>96</sub> رس وقت میں ص میراٹیاں  
جینیا، 1696 مرد صادق 351 سرفضا موٹاٹیل گسٹت سواری گاڑی سہاراٹیل  
ڈرائیور باج میں 965 علاقہ حدود مقام دورانیہ

صاحب عالیہ  
متل نہ کہ اصل ع

P. A. K.  
AMHC PS Mirsora  
15 - 11 - 016



در 57 ورائٹی علی بابا ویشاہ از وقت 05:45 بجے صبح 14 <sup>10</sup>/<sub>96</sub> میں ص میراٹیاں واس 2106  
ص وقت 351 سواری گاڑی سہاراٹیل ڈرائیور باج میں 965 سرفضا موٹاٹیل  
گسٹت علاقہ مقام دورانیہ سواری میں

صاحب عالیہ  
متل نہ کہ اصل ع

P. A. K.  
AMHC PS Mirsora  
15 - 11 - 016



Attested  
*[Signature]*  
Advocate



1919

1919

Attested  
Mudra  
Advocate

82-10-16  
M.M.S. M...  
POLICE STATION  
134-16

19/10/16  
16:55  
465  
33  
19-10-16

19/10/16

M.S.

17

2

RPO Madhya Pradesh  
Madhya Pradesh  
RPO Madhya Pradesh

Attested  
Advocates  
[Signature]

For Comments  
DPO Surat

الطابق  
التقارير  
465



في تاريخ 10/05/2017  
في تاريخ 10/05/2017

في تاريخ 10/05/2017  
في تاريخ 10/05/2017

في تاريخ 10/05/2017  
في تاريخ 10/05/2017

في تاريخ 10/05/2017

في تاريخ 10/05/2017

Annexure "E"

18

From : **The Regional Police Officer,  
Malakand, at Saidu Sharif, Swat.**

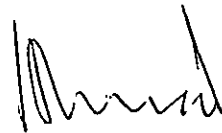
To : **The District Police Officer, Swat.**

No. 9538 /E, dated Saidu Sharif, the 14-11- /2016.

Subject: **MERCY PETITION.**

Memorandum:

Please refer to your office memo No. 13627/E, dated 04/11/2016.  
Mercy petition of Retired Constable Badshah Hussain No. 665 of  
Swat District has been examined and seen by Worthy Regional Police Officer,  
Malakand.



(OFFICE SUPDT: )  
For **Regional Police Officer,  
Malakand, at Saidu Sharif Swat**



**Attested**

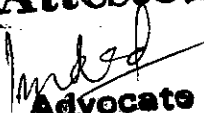
  
**Advocate**

Annexure "F" (20)

00076754 BACHA HUSSAIN CNIC: 1560290405691 Desig: CONSTABLE (80237541) Grade: 05 NTN: 0 Buckle No.: 465 Gazetted/Non-Gazetted: N  
 PAYMENTS AMOUNT DEDUCTIONS AMOUNT LOAN/FUND PRINCIPAL REPAID BALANCE

0001 Basic Pay	21,190.00	3005 GPF Subscription - Rs	745.00-	GPF#: POLSW001679	162,753.00
1000 House Rent Allowance	1,002.00	3511 Addl Group Insurance	7.00-	INCOME TAX 2,078.40	522.00 1,557.36
1210 Convey Allowance 20	1,932.00	3530 Police wel:Fud BS-1 t	424.00-		
1300 Medical Allowance	1,500.00	3604 Group Insurance	67.00-		
1547 Ration Allowance	681.00	3609 Income Tax	174.00-		
1567 Washing Allowance	150.00				
1646 Constabulary R Allow	300.00				
1901 Risk Allowance (Poli	5,010.00				
1902 Special Incentive Al	775.00				
1911 Compen Allow 20% (1-	1,000.00				
1933 Special Risk Allowan	3,000.00				
2148 15% Adhoc Relief All	660.00				
2168 Fixed Daily Allowanc	2,730.00				
2199 Adhoc Relief Allow @	429.00				
2211 Adhoc Relief All 201	2,119.00				

PAYMENTS 42,478.00 DEDUCTIONS 1,417.00- NET PAY 41,061.00 01.09.2016 30.09.2016  
 Branch Code:221276 NEW ROAD, MINGORA SWAT. HABIB BANK LIMITED NEW ROAD, MINGORA SWAT. SWAT Accnt.No: 7900358103

Attested  
  
 Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

21

In the matter of:-

Bacha Hussain Appellant

VERSUS

The RPO Malekand Respondent,  
and Others

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

**AZIZ-UR-RAHMAN and IMDAD ULLAH**

Advocates High Court

To be the advocate for the Appellant in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 15 day of 11 2016

\_\_\_\_\_  
(Signature or thumb impression)

\_\_\_\_\_  
(Signature or thumb impression)

\_\_\_\_\_  
(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk  
G.T. Road Mingora, District Swat.  
Cell No. 0300 907 0671

(IMDAD ULLAH)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,  
G.T. Road, Mingora, District Swat  
Cell No. 0333 929 7746

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

**Service Appeal No.1235/2016**

Bacha Hussain Ex- Constable No.465, District Police, District Swat.

----- (Appellant)

**Versus**

1. The Regional Police Officer Malakand Region at Saidu Sharif Swat
2. The District Police Officer, Swat

----- (Respondents)

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2	Affidavit		4
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5	Medical/Age Certificate	"B"	7

District Police Officer, Swat

(Respondent No.2)

District Police Officer,  
Swat

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

①

**Service Appeal No.1235/2016**

Bacha Hussain Ex- Constable No.465, District Police, District Swat.

----- (Appellant)

**Versus**

1. The Regional Police Officer Malakand Region at Saidu Sharif Swat
2. The District Police Officer, Swat

----- (Respondents)

**Parawise comments on behalf of Respondents.**

**Respectfully shewith:**

**Preliminarily objection:-**

1. That the service appeal is time barred.
2. That the service appeal is not maintainable.
3. That the appellant has concealed material facts from this August Tribunal.
4. That the service appeal is bad in the present form and liable to be dismissed.
5. That the appellant is estopped due to his own conduct.

**ON FACTS**

- i. Para No.1 relates to the service record of the appellant, therefore needs no comments.
- ii. Incorrect. The date of birth recorded in the service book of the appellant is 03/10/1951, whereas 1951 has been tampered as 1957. It is also pertinent to mention here that although digit 1 in 1951 has been tampered as 7, whereas date of birth recorded in words still appears nineteen hundred and fifty one. Furthermore, as per Medical certificate; the age of the appellant has also been settled as 03/10/1951 and he has been enrolled in Police department as per Medical certificate. Vide copies of 1<sup>st</sup> page of service book and Medical/age certificate as Annexures "A" and "B" respectively.
- iii. Incorrect. The fact of tampering had been concealed from authorities, whereas recently tempering in age was sorted out as date of birth recorded in digits(1951) was tampered (1957) but date of birth recorded in words in age field of the service book was still intact, therefore the appellant was retired from service w.e.f 02/10/2011.
- iv. As per Medical certificate issued on 03/10/1979, the age of the appellant was declared as 28 years, meaning thereby he was born on 03/10/1951 and as such he was enrolled as constable in Police department, hence he reached his



superannuation on 02/10/2011, therefore he was retired from service w.e.f 02/10/2011 i.e the date of his superannuation.

- v. Incorrect. The appellant connived to go with tampered date of birth and did not inform the authorities about his actual date of birth as per his Medical/age certificate. Had his date of birth not been tampered, he should have been retired from service on 02/11/2011, but later on it was revealed that his correct date of birth i.e 03/10/1951 has been tampered and illegally written as 1957, whereas date of Birth in words still remained intact as "Nineteen fifty one".
- vi. The appellant has been retired from service on reaching his superannuation i.e 02/10/2011 as per Medical certificate, therefore his departmental appeal being devoid of cogent reasons was filed.
- vii. The appellant has no good grounds to prefer the instant appeal.

**ON GROUNDS**

- a. Incorrect. 03/10/1951 has been recorded as date of birth in the service book of the appellant, whereas the same has been tampered and illegally written as 1957, however date of birth in words has still been intact, therefore, the appellant was retired from service w.e.f 02/10/2011 as he reached his superannuation on this very date. The appellant has been treated in accordance with Law and rules.
- b. Incorrect. The appellant is referring to a tampered date of birth i.e 03/10/1957, whereas according to Medical certificate his correct date of birth is 03/10/1951, and the appellant connived to go with a tampered date of birth.
- c. Incorrect. As per Medical/age certificate, the correct date of birth of the appellant is 03/10/1951 whereas the same has been tampered and illegally written as 1957, whereas date of birth recorded in words had still been intact, therefore the appellant was retired w.e.f 02/10/2011.
- d. Incorrect. The appellant connived to go with a tampered date of birth and illegally received salaries.
- e. Incorrect. The appellant was due to retire from service on 02/10/2011, but his date of birth in digits was tampered and he served in excess of 60 years age and condoned the tampered date of birth.
- f. Incorrect. PG No. 04/2013 has been issued in the year 2013; whereas the appellant was due to retire from service in the year 2011.
- g. Incorrect. The respondents have neither misused their authorities nor issued any illegal orders.


h. Incorrect. The respondents have exercised their vested authority in right course in accordance with Law and Rules.


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i. Incorrect. The appellant has not been deprived of his legal and legitimate right.

**PRAYER:-**

In view of the above comment on facts and grounds it is prayed that appeal of the appellant may be dismissed with cost.

  
Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondents No.01)

  
District Police Officer, Swat  
(Respondents No.02)  
District Police Officer,  
Swat

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

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**Service Appeal No.1235/2016**

Bacha Hussain Ex- Constable No.465, District Police, District Swat.

----- (Appellant)

**Versus**


1. The Regional Police Officer Malakand Region at Saidu Sharif Swat
2. The District Police Officer, Swat

----- (Respondents)

**Affidavit**

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of my knowledge/ behalf and nothing has been kept secret from the August Court.

  
Regional Police Officer Malakand  
Region at Saidu Sharif Swat  
(Respondents No.1)

  
District Police Officer, Swat  
(Respondents No.2)  
District Police Officer,  
Swat

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

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**Service Appeal No.1235/2016**

Bacha Hussain Ex- Constable No.465, District Police, District Swat.

----- (Appellant)

**Versus**


1. The Regional Police Officer Malakand Region at Saidu Sharif Swat
2. The District Police Officer, Swat

----- (Respondents)

**Authority Letter**

We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.

  
Regional Police Officer Malakand  
Region at Saidu Sharif Swat  
(Respondents No.1)

  
District Police Officer, Swat  
(Respondents No.2)  
District Police Officer,  
Swat

X

6

**CHARACTER AND SERVICE ROLL OF**

REGIMENTAL NO. ( ) in  
 DISTRICT ( ) in  
 DISTRICT ( ) in

DISTRICT.  
 DISTRICT.  
 DISTRICT.

P.C. No. 13.10.1979  
 M. C.

Name	Father's Name	Tribe or caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth	Height	Chest Measurement	Date of Enrolment	Age on Enrolment	Distinctive Marks
	Mohd. Anwar		Alghora	Thosara	De	Mohamad / Agency, Thosara	M. Agency	M. F. P.	13.10.1957	5' 7"	35 X 37	13.10.1979	25 years

Verification Roll No. \_\_\_\_\_ dated \_\_\_\_\_ received back and attached to the Fauji Misal.

Government Service prior to present employment, which is approved for pension service:

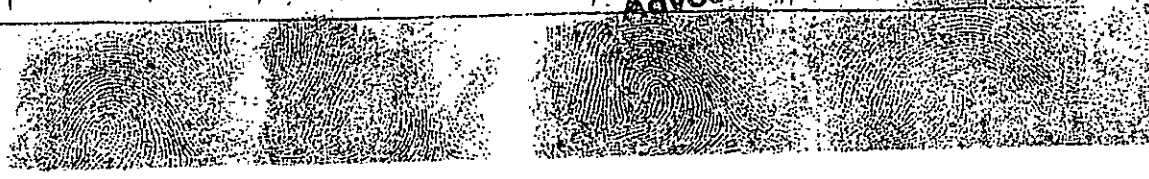
Service or department	Rank or Grade	Pay of last Appointment	PERIOD									
			From	To	Years	Months	Days					
Cause of and character on discharge from above service.			Reference to orders approving above service for pension service in the Police Department.									

*Agreement.*—I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the purport of that section and the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are governed, have been explained to me. I agree to serve faithfully under the provisions of the said Police Act and to obey all lawful orders issued to me by my Superior Officers and undertake not to resign my appointment within three years from the date of my enrolment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861).

Signature

Roller impression of fingers and thumb of left hand.

Left little	Left ring	Left middle	Left index	Left thumb
			Attested [Signature] Advocate	



Amexer. "B"

(18) (7)

No 183 CASI

Dated Saidu Sharif, the 3/2/79  
SWAT DISTT:

POLICE DEPTT: CERTIFICATE.

I do hereby certify that I have examined Badshah Hussain/o  
Badshah Hussain a candidate for employment in the Police Deptt: and cannot  
discover that he has any deasear constutional affiection or bodily infirmity  
except NU

I do not consider this a disqualification for employment in  
the office of Police Deptt. His age is according to his own statement  
22 years and by appearance about 28 years.

Dated 3/10 1979.

(Twenty Eight)

It is declared that I have never been pronounced unfit for Govt: employment  
by medical Board or any other duly constituted medical authority.

*widom*  
*Widom*  
*Widom*  
*Widom*

*Signature*

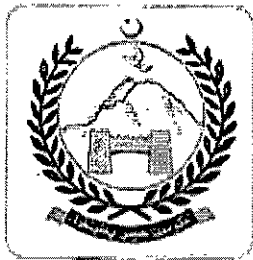
Signature or thumb impression  
of the candidate.



3/6/79

(2)

Swat



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No. 2105 /ST Dated: 15/9 /2017

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To,

The District Police Officer,  
Government of Khyber Paktunkhwa,  
Swat.

Subject: - JUDGMENT IN APPEAL NO. 1235/2016, BACHA HUSSAIN.

I am directed to forward herewith a certified copy of judgment dated 05/09/2017 passed by this tribunal on the above subject for strict compliance.

Encl: as above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR