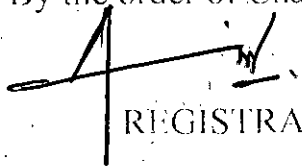


FORM OF ORDER SHEET

Court of _____

Appeal No. 85/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04/01/2024	<p>The appeal of Mr. Arif Saeed resubmitted today by Syed Roman Shah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshi is given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Arif Saeed received today i.e on 01.01.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Address of appellant is incomplete be completed according to rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules-1974.
- 2- Annexure-J of the appeal is illegible be replaced by legible/better one.

No. 19 /S.T.

Dt. 2/1 /2024.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Romian Shah Adv.
High Court Peshawar.

Note:-

As to objection No. 2, Address of Appellant is completed as per rule-6 of KP-Service Tribunal rule 1974, inat page no. 7, address of parties.

As to objection No. 2 Annexure-J is replaced with the New legible copies, hence resubmitted for further N/A please.

*Syed Romian Shah
04/01/2024*

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 85 /2023

Arif Saeed Appellant

Versus

Government of Khyber Pakhtunkhwa and others Respondents

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S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal with affidavit		
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4.	Copy of appointment letter and rules	A	8-9
5.	Copy of the Levies KP ACT 2019	B	10-12
6.	Copy of Notification No 4476/GB Dated 29/05/2019	C	13-16
7.	Notification dated 22/03/2021	D	17-17A
9.	Copy of Amended Notification Dated 21/10/2021	E	18-20
10.	Copy of Judgment of High Court Dated 29/11/2022	F	21-22
11.	Copies of Judgment Dated 24/08/2023 and Provincially Administered Tribal Areas Levies Force (Amended), Act 2021,	G & H	23-52
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Through

Saeed
Appellant

Syed Roman Shah
Syed Roman Shah
Advocate high Court
Mob No. 0333-9918830

①

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 85 /2023

Arif Saeed S/oBadna Badshah, R/o Gardi banda, Tehsil Takhti Nasrati District
Karak..... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home and Tribal Affairs, Civil Secretariat, Peshawar
3. Provincial Police officer /Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
4. Deputy Commissioner, Karak/Commandant levies force Karak
.....Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE NOTIFICATION DATED 22/03/2021, WHICH WAS
FURTHER AMMENDED VIDE NOTIFICATION NO.SO(POLICE-II)/HD/1-
3/2020/MKD/LEVIES DATED 21-10-2021 WHEREBY THE RETIRING
AGE FOR THE APPELLANT HAS BEEN REDUCED TO 25 YEARS OF
SERVICE OR 45 YEARS OF AGE WHICHEVERE IS EARLIER AS WELL
AS AGAINST THE MINUTES OF THE MEETING DATED 26-09-2023.

PRAYER

On accepting this service appeal, the impugned notification Dated 22/03/2021 and the amended notification dated 21/10/2021 along with the minutes of the meeting dated 26/09/2023 may graciously be set aside by declaring it illegal, unlawful, without authority, based on mala fide, void abinatio and thus not sustainable in the eyes of law.

Respectfully Sheweth;

1. That the petitioner was appointed on 22/04/2010 as levy Sepoy BPS-5 in District Karak, initially the service of the appellant was established and

2

controlled under the "Federal Levies Force (Service) Rules, 2012", whereby in section 16 of the said rules the force personal shall retire from service on attaining the age of superannuation i.e 60 Years. **(Copy of appointment order and rules attached as Annexure "A")**

2. That after Constitutional (Twenty- fifth Amendment) Act, 2018 (Act No. XXXVII of 2018) FATA has been merged in the province of Khyber Pakhtunkhwa the Provincial Assembly of Khyber Pakhtunkhwa passed a special Act for the Levies Force called Khyber Pakhtunkhwa Levies Act, 2019, wherein in section 09 of the said act services of the levies force have been absorbed in Khyber Pakhtunkhwa Police. **(Copy of the KP Levies Act 2019 is annexed as Annexure- B).**
3. That bare reading of the section 09(2) of the abid Act it transpired that Federal Levies Force Regulation 2012 will be applicable upon the Federal Levies Force until the Provincial government will absorb the Federal Levies into police department, hence, in the light of said act, the respondent No. 3 vide Notification No. 4476/GB dated Peshawar 29/05/2019 absorbed the services of appellant and all the levies force into Police Department. **(Copy of Notification 4476/GB is attached as Annexure-C).**
4. That in spite of the fact that the appellant service has been absorbed in Khyber Pakhtunkhwa Police, the respondent department issued impugned notification, No. SO/Police-III/HD/MKD/Levies/Misc:/2020 Peshawar dated 22/03/2021, whereby it was stated that all levy personal shall retire on completion of 25 years services or 42 years of age whichever is earlier. **(Notification dated 22/03/2021 is attached as annexure-D).**
5. That, in continuation of above notification the respondents have issued another Notification bearing No. SO/Police/-II/HD1-3/Federal Levies 2021, Dated 21/10/2021 amending the first notification by increasing the age of retirement from 42 to 45. **(Copy of the Amended Notification Dated 21/10/2021 is attached as Annexure-E).**
6. That feeling aggrieved from the action and an-action of the respondents appellant alongwith other colleagues not only of District Karak but from all over the province challenged the above mentioned notifications in

3

various Writ Petitions Before the Worthy Peshawar High Court Peshawar, and as the crucial and important question was that whether appellants comes under the definition of Civil Servant or otherwise, a Larger Bench was constituted and the Larger Bench of the High Court vide order dated 29/11/2022 decided the case in the following manner, (The relevant portion of the said Judgment is re-produced Below);

"In view thereof, the status of the petitioners has been declared as that of civil servants and the matter in question revolve around the term and; conditions of their service which does fall outside the jurisdiction of this court given the baring provision of Article 212 of the Constitution and as such instant petitions are dismissed; being not maintainable. However, the petitioners may approach the worthy Service Tribunal for the redressal of their grievances if so advised. Albeit, earlier the status of petitioners being civil servants was not determined, therefore, the petitioners may avail the remedy of appeal within the statutory period of limitation commencing from the date of issuance of the certified copy of this judgment in terms of the judgment of august apex court case in Gul Raqib Khan's case 2018 SCMR 903." (Judgment is attached as Annexure-F)

7. That after fulfilling the legal formalities the petitioner has approached the Worthy Service Tribunal and impugned both the notifications i.e 22/03/2021 and 21/10/2021, which were decided vide a consolidated Judgment 24/08/2023 whereby both the notification were declared in effective and the appeals were disposed-off and the respondent Department would consider the matter in light of the Provincially Administered Tribal Areas Levies Force (Amended), Act, 2021. (Copies of Judgment Dated 24/08/2023 and Provincially Administered Tribal Areas Levies Force (Amended), Act 2021, are attached as Annexure-G & H)
8. That as per the Judgment of this honorable Tribunal The petitioner has approached the respondent Departmental for the redressal of their grievance on 01/09/2023, but after expiry of statutory period of 90 days

(4)

the same were remained undecided and in the meanwhile the respondent department in spite of implementing the judgment supra, and Act, astonishingly disagreed with the judgment of this honorable tribunal and issued the impugned minutes of the meetings dated 26/09/2023. **(Copy of departmental appeal and minutes of the meeting is attached as Annexure-I & J)**

9. That the petitioner feeling aggrieved from the action and in action having no other efficacious remedy but to file this service appeal on the following amongst other ground.

GROUND:

- a. That both the impugned notifications along with the minutes of the meeting dated 26/09/2023, are illegal, unlawful, without authority, based on mala fide intention, against the natural justice, violative of the Constitution and Service Law and equally without jurisdiction, hence the same are liable to be set aside in the best interest of justice.
- b. That the petitioner has been absorbed in the Khyber Pakhtunkhwa police and as per law the government of Khyber Pakhtunkhwa home and Tribal Affairs has no right to frame/make any rules for the Levies Force, Hence the illegal notifications and minutes of the meetings are liable to be set aside which was issued on abrupt manner.
- c. That once the services of the petitioner is absorbed in the Police then all the civil servants rules will be applicable to the petitioner, therefore the respondents are required to treat the petitioner as a civil servant.
- d. That according to absorption notification dated 29/05/2019 the necessary entries were made in the service record of the petitioner and the petitioner was upgraded to Constable BPS-07, similarly the petitioner starting drawing his salary according to BPS-7 and also given arrears and risk allowance.
- e. That the petitioner is young and energetic civil servant and can efficiently perform his duty, and if these notifications remain in field

(5)

the petitioner will get retired in young age which is against the basic principle of service, therefore these are liable to be set aside.

- f. That impugned illegal notifications are discriminatory in nature as other fellow civil servants will be retired after attaining superannuation while the petitioner will be stand retired at the age of 42 or 45 year, hence the notifications may please be declared illegal.
- g. That both the impugned notifications are against the constitution of Islamic Republic of Pakistan, 1973 similarly are liable to be declared as null and void.
- h. That the biasness of the respondents are very much obvious from the fact that while issuance of the impugned notifications the petitioner was neither heard nor even informed thus all the proceedings thereof are illegal and against the basic rules of the services similarly after the judgment of this Honorable Tribunal the respondents were bound to treat the petitioners as per the judgments of this forum and were having no authority to disagree with the verdict of this Honorable Forum.
- i. That once in august Peshawar High Court judgment it was categorically clarified that the petitioner are civil servants hence the petitioner is liable for all the benefits available to a civil servants and the impugned notifications has no standings in the eye of law thus liable to be declared illegal and against the accrued rights of the petitioner.
- j. That while issuing the impugned notifications department did not bothered to take into consideration that the appellant is honest and dedicated official and left no stone unturned to discharge his duties.
- k. That the impugned notifications have been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and malafidly based the impugned notifications without giving any reason whatsoever, therefore the impugned notifications & order are bad in law.

6

1. That the fundamental rights of the petitioner have been violated due to the issuance of the impugned notifications through which the services of the appellant was taken into high risk.

On accepting this service appeal, the impugned notification Dated 22/03/2021 and the amended notification dated 21/10/2021 along with the minutes of the meeting dated 26/09/2023 may graciously be set aside by declaring it illegal, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable in the eyes of law.

Any other relief not specifically prayed for but deems appropriate in the circumstances of the case may also be granted.

Arif Saeed
Appellant

Through

Syed Roman Shah
Syed Roman Shah
Advocate high Court

Dated: 22/12/2023

AFFIDAVIT

I, Arif Saeed S/o Badna Badshah, R/o Gardi banda, Tehsil Takhti Nasrati District Karak, do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

Arif Saeed
Deponent

(7)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. /2023

Arif Saeed Appellant

Versus

Government of Khyber Pakhtunkhwa and others..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT

Arif Saeed S/o Badna Badshah, R/o Gardi banda, Tehsil Takhti Nasrati District
Karak..... Appellant

RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Home and Tribal Affairs, Civil Secretariat, Peshawar
3. Provincial Police officer /Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
4. Deputy Commissioner, Karak/Commandant levies force Karak

Arif Saeed
Appellant

Through

Syed Roman Shah
Syed Roman Shah
Advocate high Court

Dated: 22/12/2023

②

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. /2023

Arif SaeedAppellant

Versus

Government of Khyber Pakhtunkhwa and othersRespondents

Application for the suspension of impugned notifications dated 22/03/2021 and 21/10/2021 ALONG WITH THE Minutes of the meeting dated 26/09/2023, so that the appellant may please to continue their duty, till the final decision of the service appeal.

Respectfully Sheweth,

1. That the appellant has filed the above mentioned appeal (the facts and grounds of which may please be treated as part and parcel of this application) in which the date has not been fixed yet.
2. That the appellant has a good prima facie case and very much confident that the appeal may be allowed.
3. That the appellant is performing his duty in respondent department, if the status quo is not maintained the appellant will cause irreparable loss.
4. That the balance of convenience also lies in favor of the appellant.

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5. That during the pendency of the Writ petition the Honorable Peshawar High court Peshawar was kind enough to suspended the impugned notifications; therefore this honorable tribunal is pleased to suspend the said notifications.

It is therefore most humbly prayed that upon acceptance of this application the impugned notifications along with operation of the impugned minutes of the meetings dated 26/09/2023 may please be suspended and the appellant may please be continue his services till the final disposal of the case.

Zaheed

Applicant/appellant

Through

Syed Roman Shah
Syed Roman Shah

Advocate High Court

0333-9918830

109
①

Annexure A

OFFICE OF THE DISTRICT COORDINATION OFFICER KARAK

OFFICE ORDER.

Dated Karak the. 22 /04/2010

No. 1081 /EA/Levy. Mr Arif Saeed s/o Banda Badshah r/o Gardi Banda Tehsil Takhti Nasratti Tehsil Takhti Nasratti District Karak is hereby appointed as Levy Sepoy against the newly created post in Federal Levy Force Karak with immediate effect in the interest of public service under the following terms & conditions:-

TERMS & CONDITIONS

1. The above appointment is purely on temporary basis and liable to termination without any notice.
2. His services will be governed by such rules, regulations, orders, Acts and Ordinances promulgated by the Federal Govt. for that category of employees.
3. He shall not be entitled for pensionary benefits unless sanctioned by the Govt.
4. He will have to produce Health & Age Certificate from authorized Medical Superintendent.

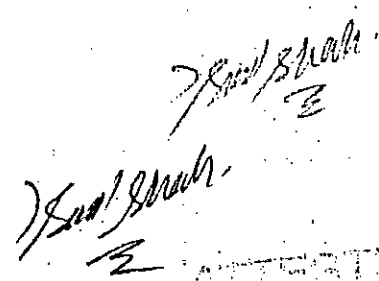
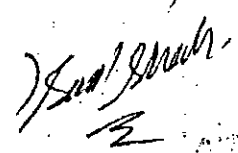

DISTRICT COORDINATION OFFICER
KARAK

Endst: of Even No. & date:-

Copy forwarded to the:-

1. Commissioner Kohat Division Kohat.
2. Deputy Secretary S & LK SAFRAN Divn. Govt. of Pakistan Islamabad.
3. Section Officer, (FATA) Home & T. As Deptt. Peshawar.
4. Distct Accounts Officer, Karak.
5. Individual concerned.


DISTRICT COORDINATION OFFICER
KARAK



ATTSTED
ATTSTED COPY

REGISTERED No. M-302
L-7646

The Gazette of Pakistan



EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, FRIDAY, AUGUST 03, 2012

PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

STATES & FRONTIER REGIONS DIVISION

NOTIFICATION

Islamabad, the 28th June, 2012

S. R. O. 954 (I)/2012.—In exercise of the powers conferred by section 10 of the Federal Levies Force Regulation, 2012 the Federal Government is pleased to make the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called "Federal Levies Force (Service) Rules, 2012."

(2) They shall come into force at once.

2. Definitions.—(1) In these Rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them:—

(i) "Appointing Authority" means the appointing authority specified in rules 4;

(4649)

[273: (20 2) A. Gaz.]

Price: Rs. 10.50

Amir Shah
ATTSTED

11A

Better copy

Extra ordinary

PUBLISHED BY AUTHORITY

ISLAMABAD, FRIDAY, AUGUST, 03, 2012

PART II

STATUTORY NOTIFICATION (SRO)

GOVERNMENT OF PAKISTAN

STATE & FRONTIER REGIONS DIVISION

NOTIFICATION

Islamabad the 28th June, 2012

SRO 954 (I)/2012,--- in exercise of the powers conferred by section 10 of the federal levies force regulation, 2012 the Federal Government is pleased to market the following rules, namely;

1. Short title and commencement (1) These rules may be called federal services force (service) rules, 2012

(a) They shall com.....into force at once

2. Definitions—(I) in these Rules, unless the context otherwise require the following expressional shall have the meanings hereby respectively assigned to then namely .

3. Appointing Authority means the appointing authority specified in rules 4

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ATTSTED

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FAR No. : 0010000071

4 Dec. 2012 4:05PM P1

4654 THE GAZETTE OF PAKISTAN, EXTRA., AUGUST 03, 2012 (Part II)

✓ 16. Retirement.—The Force personnel shall retire from service on attaining the age of superannuation i.e. 60 years or he may opt for retirement after completing 20 years of regular service.

17. Extension in Service.—No extension in service shall be granted at any cost whatsoever.

18. Conduct.—The conduct of Force personnel shall be regulated by rules made, or instructions issued by Government.

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

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

(2) Force personnel shall be granted compensation in case of sustaining fatal injury or injuries during the discharge of his duty. If he is declared incapacitated for further service due to such fatality, he shall be entitled to gratuity and pension for rendering minimum service of ten years.

(3) Sons and wards of such martyred and incapacitated Force Personnel shall be given preference in recruitment of Force personnel for compensating the family martyr.

21. Funds.—(1) Force personnel shall be governed by the provision of general provident funds, benevolent funds and group insurance as prescribed for other employees of the Government.

2/2/2012

ATTSTED

(2A)

Best copy

FAX NO. :0519206672 4654 16. 4 Dec. 2012 4:05PM P1

THE GAZETTE OF PAKISTAN, EXTRA., AUGUST 03, 2012 (PART II)

16 Retirement.-The Force personnel shall retire from service on attaining the age of superannuation i.e. 60 years or he may opt for retirement after completing 25 years of regular service.

17. Extension in Service.-No extension in service shall be granted at any cost whatsoever.

18. Conduct. The conduct of Force personnel shall be regulated by rules made, or instructions issued by Government. Gratuity and pension.-

Gratuity and Pension-All Force personnel will be entitled to pension as per prevailing Government rules,

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

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21. Funds.--(1) Force personnel shall be governed by the provision of general provident funds, benevolent funds and group insurance as prescribed for other employees of the Government.

Kamran Khan

ATTSTED

(13)

Annexure-B

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;

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;

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ATTSTED

- (10) (14)
- (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;
- (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.11 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.

Shah

Shah

ATTSTED

(14) (15)

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 sub-section (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.11 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.

(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 procedures 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).

[Signature]

[Signature]

ATTESTED

(12) (16)

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.

(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.	Hasunkhel in district Peshawar.
2.	Darra Adam Khel in district Kohat.
3.	Beltani in district Lakki Marwat.
4.	Wazir in district Esonu.
5.	Jandohi in district Tank.
6.	Darazinda in district Dera Ismail Khan.

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BY ORDER OF MR. SPEAKER,
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA.

[Handwritten signature]

(AMJAD ALI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

ATTSTED

17

Annexure 'C'



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

NOTIFICATION

Dated, Peshawar, the 27/05/2019

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

S.No	From Rank in Levies / Khosalar	To Rank in Police
1.	Sepoy	Constable (IPS-07)
2.	Lower Naik	Constable A (IPS-07)
3.	Naik	Constable B-1, LDC (IPS-07)
4.	Head Constable	Head Constable (IPS-09)
5.	Sub-Inspector	Assistant Sub-Inspector (IPS-11)
6.	Inspector	Sub-Inspector (IPS-14)
7.	Sub-Inspector Major	Inspector (IPS-10)

Sd/-
MUHAMMAD NAJEEF ULAN, DSP
Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar

Enlist: No. & date given.

Copy forwarded to the:-

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

Sd/- Sadiq Baloch

Sd/- Sadiq Baloch

Sadiq Baloch
(SADIQ BALOCH) DSP
AIC/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

ATTSTED

(17A)

Better Copy

Office of the Inspector General
of Police Officer Khyber
Paktunkhwa Peshawar.

Notification.

No. 4476/GB

Dated Peshawar 29/05/2019

The Provincial Police Officer Khyber Pakhtunkhwa is pleased to designate the following rank of Levies and Hisadar Force for the purpose of their induction / absorption in Khyber Pakhtunkhwa with immediate effect.

S. No	From Rank in Levies / hisadar	To Rank in Police
1	Sepoy	Constable BPS07
2	Lince Naik	Constable A-1 BPS-07
3	Naik	Constable B-1 LHC BPS-07
4	Hawaladar	Head Constable BPS-09
5	Naib Subidar	Assistant Inspector BPS -11
6	Subidar	Sub Inspector BRS-14
7	Subidar Major	Inspector BPS-16

Sd

Muhammad Naeem Khan PSP
Inspector General of Police
Khyber Pakhtunkhwa

Copy forward to

1. Secretary Establishment Khyber Pakhtunkhwa Peshawar.
2. Secretary Finance Department Govt. of KP Peshawar.
3. Secretary Home & Tribble Affair Department Govt. of KP Peshawar.
4. All head of police KPK
5. PSO to IGP KP Peshawar.
6. Registrar CPO.

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Saddiq Baloch PSI
PSP AIG / Establishment
For Inspector General of Police KP
Peshawar

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GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
PESHAWAR

No. SO(Police-II)/HD/MKD/Levies/Misc./2020
Dated, Peshawar the 22-3-2021

(14) (13)

Annexure-D

To

The Deputy Commissioners,

1. Malakand
2. Swat
3. Upper Dir
4. Lower Dir
5. Upper Chitral
6. Lower Chitral
7. Kohat
8. Hangu
9. Karak
10. Lakki Marwat
11. Torghar

SUBJECT: CHIEF MINISTER DIRECTIVES - RESTORATION OF SCHEDULE-III OF FEDERAL LEVIES RULES, 2013 AND SCHEDULE-IV OF PROVINCIAL LEVIES RULES, 2015

Dear Sir,

I am directed to refer to the subject noted above and to forward herewith approved notification regarding amendments in Federal Levies Rules, 2013 in compliance of the Provincial Cabinet Decision dated 24-02-2021, for further necessary action with intimation to this department, please.

Encls. As above:-

Yours faithfully,

Section Officer (Police-II)

Copy of the above is forwarded to the:-

1. Section Officer (Cabinet), Administration Department, Khyber Pakhtunkhwa with reference to the letter No. SOC(E&AD)/9-51/2021, dated 08-3-2021.
2. Section Officer (D/AB), Home Department, with reference to the letter No. SO(D/AB)/HD/6-8/2020, dated 15-3-2021 in compliance of SO (Cabinet), Administration Department letter quoted above.
3. Assistant to the Commissioners of Malakand, Hazara, Kohat and Bannu, for information please.
4. District Accounts Officers, Malakand, Swat, Upper Dir, Lower Dir, Upper Chitral, Lower Chitral, Kohat, Hangu, Karak, Lakki Marwat and Torghar
5. PS to the Secretary Home Department
6. PS to the Special Secretary-II, Home Department.
7. Mater File

Section Officer (Police-II)

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To be substituted notification of even No & date.



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

NOTIFICATION

Peshawar, dated the 22-3-2021

No. SO(Police-II)HD/MKD/Levies/Misc./2020:- In exercise of the powers conferred by Section-9 of the PATA Levies Force Regulation, 2012, the Provincial Government of Khyber Pakhtunkhwa is pleased to direct that in the PATA Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made, namely:-

Amendments

In the said rules:-

1. In Rule 4, sub-rule (1), the following shall be substituted, namely:

"(i) Commandant shall be the appointing authority for Initial recruitment and promotion up to the rank of Subedar.

Provided that the appointing authority for purpose of promotion to the posts of Subedar Major and Superintendents shall be Secretary, Home Department."

2. For Rule 17, the following shall be substituted namely:

"17. Retirement: All Levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted"

3. For Schedule-III, the following shall be substituted, namely:

"Schedule-III
[see rule 17]

S. No.	Name of the Post / Rank	Qualification for Promotion.	Length of Service / Age
1	Subedar Major (BS-18)	On the basis of Seniority-cum-fitness from amongst the Subedars having Intermediate Qualification.	Thirty Seven Years or Three Years' Service as Subedar Major or Sixty Years of age whichever is earlier
2	Subedar (BS-13)	By promotion, on the basis of Seniority Cum Fitness in the following manner, namely: (i) Fifty Percent (50%) from amongst the Naib Subedars having intermediate qualification, and (ii) Fifty Percent (50%) from amongst Naib Subedars having Secondary School Certificate	Thirty Five Years service or Five Years service as Subedar or Sixty years of age whichever is earlier
3	Naib Subedar (BS-11)	By promotion, on the basis of Seniority-Cum Fitness in the following manner, namely (i) Fifty Percent (50%) from amongst the Hawaldars having intermediate	Thirty Three Years' Service or Seven Years' Service as Naib Subedar or Sixty Years of age whichever is earlier.

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S. No.	Name of the Post / Rank	Qualification for Promotion	Length of Service / Age
4	Hawaldar (BS-08)	Qualification, and (u) Fifty Percent (50%) from amongst Hawaldars	Thirty One years service or Three years service as Hawaldar or Fifty One years of age, whichever is earlier.
5	Naik (BS-07)		Twenty Nine years service or Three years service as Naik or Forty Eight years of age, whichever is earlier.
6	L/Naik (BS-06)		Twenty Seven years service or Three years service as L/Naik or Forty Five years of age, whichever is earlier.
7	Sepoy (BS-05)		Twenty Five years service or Forty Two years of age, whichever is earlier.

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

Copy forwarded to the:-

1. Principal Secretary to the Governor, Khyber Pakhtunkhwa.
 2. Principal Secretary to the Chief Minister, Khyber Pakhtunkhwa
 3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
 4. Registrar, Peshawar High Court, Peshawar.
 5. All Commissioners, Khyber Pakhtunkhwa.
 6. All Deputy Commissioners, Khyber Pakhtunkhwa.
 7. Provincial Police Officers, Khyber Pakhtunkhwa.
 8. All Heads of Attached Department in Khyber Pakhtunkhwa.
 9. PSO to the Chief Secretary, Khyber Pakhtunkhwa
 10. Accountant General, Khyber Pakhtunkhwa.
 11. Direction Information, Khyber Pakhtunkhwa.
 12. The Manager Government Printing & Stationery Department, Khyber Pakhtunkhwa.
- It 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)

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(17) (21)

Annexure-E



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-14)	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	Seppy (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-14)	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)	03 years' service as Lance Naik Or Total 08 years of service			
6	L/Naik (BS-08)	05 years' service as Sepoy		100%	SSC
7	Seppy (BS-07)		100%		SSC Qualification with certificate of Armorer
8	Head Armorer (BS-5)	05 years' service as Assistant Armorer		100%	SSC Qualification with certificate of Armorer
9	Assistant Armorer (BS-1)				

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Copy forwarded to the:-

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

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Section Officer (Police-II)

21/10/2011

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BEFORE THE PESHAWAR HIGH COURT
MINGORA BENCH (DARUL QAZA SWAT)

W.P. No. 367 - M/2021



1. Muhammad Ghafar (Naik), Regt / belt No. 02,
2. Nowsher (Naik), Regt / belt No. 03,
3. Inayatullah (Lance Naik) Regt / belt No. 5,
4. Umar Bakht Lance Naik Regt / belt No. 20,
5. Muhammad Yasin Lance Naik Regt / belt No.21,
6. Akhtar Munir Lance Naik Regt / belt No.22,
7. Israr Ud Din Lance Naik Regt / belt No. 23,
8. Sardar Hussain (Sepoy) Regt / belt No. 225,
9. Amir Rahman (Sepoy) Regt / belt No. 226,
10. Shah Hussain (Sepoy) Regt / belt No. 250,
11. Mukhtiar Ali (Sepoy) Regt / belt No. 251,
12. Usman Ali (Sepoy) Regt / belt No. 272,
13. Attaullah (Sepoy) Regt / belt No. 273,
14. Muhammad Nawaz (Sepoy) Regt / belt No. ~~274~~,
15. Tariq Mahmood (Sepoy) Regt / belt No. 288,
16. Sajjad Ahmad Sepoy/Tailor Regt / belt No. 262,
17. Muhammad Naeem Sepoy/Gardner Regt / belt No. 263,
18. Samiullah Sepoy/Cook Regt / belt No. 264,
19. Mian Umar Khan Sepoy / Carpenter Regt / belt No. 266,
20. Umar Zada Sepoy/Mason Regt / belt No. 267,
21. Fazal Maula Sepoy/Penter Regt / belt No. 269,
22. Bacha Khan Sepoy/Dhobi Regt / belt No. 296,
23. Muhammad Ismail Lance Naik Regt / belt No. _____,
24. Waqar Habib Lance Naik Regt / belt No. 25,
25. Irfan Lance Naik Regt / belt No. 27,

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30 MAR 2021

Additional Registrar

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Peshawar High Court

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- 26. Sajjad Ali Lance Naik Regt / belt No. 28,
- 27. Saida Hussain Lance Naik Regt / belt No. 29,
- 28. Muhammad Diyar Lance Naik Regt / belt No. 30,
- 29. Akbar Shah Sepoy/Electrician Regt / belt No. _____, Swat Levies at office of the Deputy Commissioner district Swat at Saidu Sharif.
- 30. Haidar Ali Sepoy/pentert Regt/belt No. 275,
- 31. Rahmat Ali _____
- 32. Sultan Ali Sepoy/tailor Regt/belt No. 268,
- 33. Sarfaraz Khan sepoy Regt/belt No. 227,
- 34. Shaukat Ali Sepoy Regt/belt No. 252,
- 35. Sana Ullah Sepoy/ Electrician Regt/belt No. 271,
- 36. Shaukat Rahman Sepoy Regt/belt No. 253

.....Petitioners

VERSUS

- 1) Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa at Peshawar,
- 2) Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, at Peshawar,
- 3) Commandant Swat Levies / Deputy Commissioner District Swat at Saidu Sharif Swat,
- 4) Islamic Republic of Pakistan through Secretary to Government of Pakistan SAFRON Division at Islamabad,
- 5) Secretary to Government of Pakistan SAFRON division at Islamabad

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.....Respondents

3-0 MAR 2021

Additional Registrar

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Peshawar High Court

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Peshawar
Ch. Secy Govt
28/3/21

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Judgment Sheet
PESHAWAR HIGH COURT, PESHAWAR.
(JUDICIAL DEPARTMENT)

W.P.No.367-M/2021 with I.R,
CM Nos.1053/2021 & 1183/2022.

JUDGMENT

Date of hearing -- 29.11.2022.

Barrister Dr.Adnan for petitioners.

Mr.Saqib Raza, A.A.G for the respondents.

=====

S M ATTIQUE SHAH, J:- Through this single judgment, we shall also decide the connected writ petitions bearing Nos.337-M/2021, 406-M/2021, 503-M/2021, 514-M/2021, 518-M/2021, 450-M/2021, 601-M/2021, 681- M/2021, 632- M/2021, 919-M/2021, 968- M/2021, 980- M/2021, 1221-M/2021, 1222-M/2021, 1252-M/2021, 2210-P/2021, 2913-P/2021, 5092-P/2021, 5423-P/2021, and 5424-P/2021 as adjudication of a common question of law and fact is involved in all the petitions wherein the petitioners have challenged the vires of notification No. SO (Police-II) HD/ MKD/Levies/Misc/2020 dated 22.03.2021 whereby on the basis of impugned office order bearing No.128/DC/CSL dated

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S M Attique Shah

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ATTSTED Peshawar High Court

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20.04.2021, they have been retired from service with further prayer that they be reinstated into service from the date of their retirement i.e. 20.04.2021 with all back benefits. In alternative, they have prayed that the respondents be directed to treat them at par with erstwhile Federal Levies of Federally Adminstrated Tribal Area (FATA) and; absorb them in police and; grant them full pensionary benefits.

2. Likewise In W.P.Nos.333-M/2021, 334-M/2021, 335-M/2021, 338-M/2021, 345-M/2021, 1026-M/2021, 1035-M/2021, 1187-M/2021, 1206-M/2021, 1207-M/2021, 34-M/2022, 212-M/202 and 993-P/2022 the petitioners have made the following prayer:

"On acceptance of this writ petition, the Impugned Notification SO (Police-II) HD/ MKD/Levies/ Misc/2020 is against law and the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973, may be declared illegal void ab Initio and of no legal effects on the rights of the petitioners."

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Peshawar High Court

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Similarly, in COC Nos.38-M/2021 in W.P.No.367-M/2021 and COC No.436-P/2022 in W.P.No.1335-P/2022 petitioners seek initiation of contempt of court proceedings against the respondents for violating the order of this court dated 21.04.2021 passed in W.P.No.367-M/2021.

3. Brief facts of the case(s) are that the petitioners were appointed in the "Swat Levies Force" as Sepoys etc. and presently terms and conditions of their services are regulated by "Provincially Administrated Tribal Areas Levies Force Regulation 2012" whereunder besides PATA Levies Force Rules, 2012, PATA Levies Force Service (Amended) Rules 2013 were also framed. Rule 17 of the Amended Rules 2013, deals with the retirement of personnel of the force, which was amended vide notification dated 12.12.2013 in the manner that "All the personnel shall retire as per Schedule-III and no extension in service beyond retirement shall be granted". On 14.07.2020, vide Notification No.SO

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Peshawar High Court

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(Police-II)HD/1-3, rule 17 was further amended by deleting schedule-IV as "All uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty (60) years or they may opt for retirement after completion of twenty-five (25) years regular service". Thereafter once again through certain modifications rule, 17 was amended by giving life to the deleted schedule-III of the rules 2013 as under:-

"Retirement; All levy personnel shall retire as per Schedule-III and no extension in service after retirement shall be granted."

4. Being aggrieved from the ibid amendment, the petitioners have filed the instant petitions.

5. Pursuant to the directions of this court respondents have filed their parawise comments, wherein issuance of the desired writs has been opposed.

6. Learned counsel representing the petitioners vehemently argued that the

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Peshawar High Court

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Impugned Notification is arbitrary, perverse, illegal, issued without lawful authority and *mala fide* intention just to deprive the petitioners of their vested rights accrued in their favour hence violative of their fundamental rights guaranteed under the Constitution and thus not sustainable in the eye of law. That though the Impugned Notification was issued under the regulation 2012. However, after the 25th Constitutional amendment, the said regulation does not hold field, therefore, the impugned Notification is liable to be set aside.

7. Conversely, worthy AAG representing the respondents opposed the arguments so advanced by learned counsel representing the petitioners at the bar while arguing that after the 25th amendment the Provincial Assembly passed the continuation of laws Act No.111 of 2019 through which the laws applicable to erstwhile PATA were allowed to continue including "Provincial Administered Tribal Areas Levies Force Regulation, 2012" and;

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Peshawar High Court

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therefore, the Impugned Notification was issued per law which does not require any Interference by this court in its writ jurisdiction under Article 199 of the Constitution. Further, petitioners are Civil Servants, and; matter in question revolves around the terms and conditions of their service which is the exclusive domain of the Service Tribunal as such the jurisdiction of this court is barred given the explicit provision of Article 212 of the Constitution.

8. Heard. Record perused.

9. Before discussing merits of the case we deem it appropriate to discuss the background of the matter in hand to properly comprehend the issue involved therein. It is worth mentioning that earlier the services of the *Levies Force* were dealt with under the *Frontier Irregular Corps (FIC) rules, 1962* which was substituted by the "*Provincial Administered Tribal Areas Levies Force Regulation, 2012*" (regulation) and under the said regulation "*PATA Levies*

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Peshawar High Court

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Force. (service) Rules, 2012" were framed for Provincial Levies Force. While separate service rules were also framed thereunder for PATA Federal Levies Force performing duties in "PATA" known as "PATA Federal Levies Force Service (Amended) Rules 2013. Rule 17 of the ibid rules deals with the retirement of the Levies personnel which was amended from time to time. However, petitioners have become aggrieved from the impugned Notification vide which the petitioners' retirement age was altered which is challenged by them through instant petitions.

10. 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 merged in the province of Khyber Pakhtunkhwa and Federal Levies Force

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Peshawar High Court

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working in FATA was merged into the regular police of the province. Albeit, in Malakand Division, Levies Force is still regulated by "PATA Federal Levies Force Service (Amended) Rules 2013 in view of the Khyber Pakhtunkhwa Act No 111 of 2019 through which the laws prevalent in erstwhile PATA at the time of 25th amendment were allowed to continue including regulation 2012 which still holds the field and as such the same is a valid instrument. Therefore, Impugned Notification was issued by the respondents with lawful authority.

11. Moving toward the status of the petitioners it is worth mentioning that earlier this court while deciding W.P No 528-M/2016 (Ikramullah's case) determined the status of personnel of the Provincial Levies Force as that of civil servants in the following terms:-

"19. The Provincial Levies Force ("Force") was granted statutory cover through Khyber Pakhtunkhwa Regulation No.1 of

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ATTESTED EXAMINER Peshawar High Court

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2014 ("Regulation"). Paragraph No.3 of the Regulation envisages for constitution and establishment of the Force and its functions. For ease reference paragraph Nos. 3 and 4 of the Regulation are reproduced as under:-

"3. Power to constitute and maintain by the Force and its functions.-- (1) Government may constitute and maintain a Force for performing the following functions, namely:

- (a) ensuring security of roads in PATA;
 - (b) ensuring security and manning of piquet;
 - (c) guarding Government institutions and installations;
 - (d) ensuring security of jails and arrested criminals;
 - (e) generally maintaining law and order providing mobile escort to VIPs;
 - (f) anti-smuggling activities especially timber smuggling;
 - (g) destruction of illicit crops;
 - (h) serving of summons or proceduras;
 - (i) raid and ambush; and
 - (j) such other functions as Government may, by notification in the official Gazette, require the Force to perform.
- (2) In discharge of their functions, officers and staff of the Force shall

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EXAMINER
Peshawar High Court

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be guided in accordance with this Regulation and the rules.

(3) The head of the Force shall be Commandant in his respective jurisdiction.

(4) Secretary to Government, Home and Tribal Affairs Department shall be the competent authority of the Force.

(5) The Force shall consist of such ranks and number of officers and members and shall be constituted in such manner as may be prescribed by rules.

(6) The officers and members of the Force shall receive such pay, pension, allowances and other remunerations and shall enjoy such leave and other privileges as may be prescribed by rules.

(7) The officers and members of the Force shall wear such uniform as may be prescribed by rules or instructions.

(8) The administration of the Force shall vest in the Commandant in his jurisdiction who shall administer it in accordance with the provisions of this Regulation, rules and instructions.

(9) The Commandant shall exercise his powers and perform his functions under the general supervision and directions of Government.

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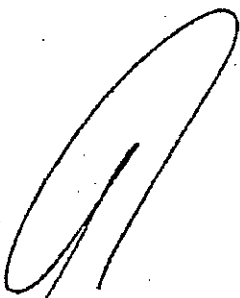
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EXAMINER
Peshawar High Court

HP (31) (35)

4. Powers and duties of officers and members of the Force.—An officer or member of the Force shall-

- (a) take effective measures for ensuring security of assigned jurisdiction and for safeguarding against acts of unlawful interference;
- (b) prevent unauthorized persons and vehicles from access to the territorial jurisdiction;
- (c) take effective measures for preventing sabotage, placement of car bombs, letter bombs, dangerous article and carriage of arms and ammunition into the restricted area;
- (d) use such arms and ammunition and equipment as may be authorized by the Commandant or an officer authorized by him;
- (e) search and arrest without warrant any person who he suspects of endangering or attempting to endanger or having endangered the safety of an installation and may use such force as may be necessary in the discharge of his aforesaid duties; and
- (f) perform such other legal functions as the competent authority may require him to perform".

20. The close perusal of the Regulation would clearly show that the Force is receiving its salary from the Provincial



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**ATTESTED
EXAMINER**
Peshawar High Court

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Exchequer and performs the policing service in the erstwhile PATA.

21. Having said this, we would now refer to the crucial issue as to whether the employees of the Force can be termed as a civil servants and as such they cannot maintain a constitutional petition before this Court for enforcement of the terms & conditions of their service.

22. The connotation 'civil servant' is defined and explained in respect to the Province of Khyber Pakhtunkhwa, in the Civil Servants Act, 1973 ("Act, 1973"). For ease reference, we would refer to Section 2 (b) of Act, 1973, which reads as under:-

"2. Definitions.—(1) In this act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a)
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include—

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Peshawar High Court

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- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)".

23. The perusal of the definition would show that a member of a civil service of the Province or who holds a civil post in connection with the affairs of the Province is civil servant. All Pakistan Services are explained in Article 260 of the Constitution, which reads as under:-

"260.
 (1).....

"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of [Majlis-e-Shoora

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 Peshawar High Court

14 (34) (38)

(Parliament)) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, [Attorney-General], [Advocate-General],] Parliament Secretary] or [Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister] or member of a House or a Provincial Assembly;

Whereas Article 240 of the Constitution envisages that:-

"240. Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined -

- (a)
- (b) In the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.

Explanation.- In this Article, "All-Pakistan Service" means a service common to the Federation and the Provinces, which was in existence immediately before the commencing

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Peshawar High Court

15 (35) (39)

day or which may be created by Act of [Majlis-e-Shoora (Parliament)]".

24. The Phrase "performing in connection with the affairs of Federation or for present matter Province" was elaborately explained in the case of Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhal and 10 others (PLD 1975 Supreme Court 244).

In the said judgment, the Apex Court has held:

"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility service and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the

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Peshawar High Court

16 (38) (40)

Federal Government or a Provincial Government".

25. Admittedly, as evident from the bare reading of paragraph-3 & 4 of the Regulation, the present petitioners are performing policing service in the erstwhile tribal area, however, their terms and conditions are being regulating through Regulation No.1 of 2014 and after the omission of Article 247 from the Constitution; through a provincial statute i.e. the Khyber Continuation of Laws in the Erstwhile Provincially Administered Tribal Areas Act, 2018 (Khyber Pakhtunkhwa Act No. III of 2019), the operation of Regulation No.1 of 2014 was continued. Thus, the essential criteria for being a civil servant is that the person holding the post must perform his functions in connection with the affairs of Federation/Province and the terms and conditions of his service should be determined by or under the Act of Parliament/Provincial Assembly. The Apex Court in the case of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others vs. RO-

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Peshawar High Court

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177 Ex-DSR Muhammad Nazir
(1998 SCMR 1081), while dealing with the case of an employee of Pakistan Rangers has observed that:

"7....Perusal of these rules clearly shows that they are all embracing, and therefore, under the amendment of section 1 of the Pakistan Rangers Ordinance, these rules would prevail over the Rules of 1973. The Pakistan Rangers Ordinance was promulgated to constitute a force called the Pakistan Rangers for the protection of and maintenance of order in the border areas. Since with regard to the status of the members of the force the Pakistan Rangers Ordinance is silent, therefore, it can be safely said that the employees of the Pakistan Rangers will be deemed to be civil servants as they are performing duties in connection with affairs of the Federation and hence under the Service Tribunals Act, 1973, an appeal by a member of the Pakistan Rangers regarding a matter relating to terms and conditions of his service is competent before the Federal Service Tribunal..."

26. Similarly, in the case of Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and

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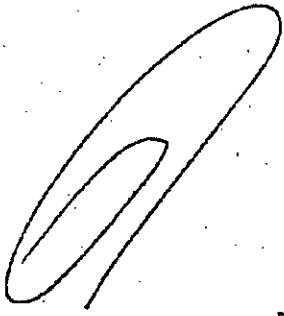
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Peshawar High Court

18 (38) (42)

others vs. Gul Raqib Khan and others (2018 SCMR 903), the Hon'ble Apex Court has elaborately examined service structure of the employees of Frontier Constabulary, which is established under Frontier Constabulary Act (Act-XIII) of 1915. Relevant paragraphs of the said judgment are reproduced as under:-

"6. Three broad tests for establishing the status and character of a civil servant emerge from the Constitutional mandate of the afore-going Articles. Firstly, under Article 240(a) of the Constitution, appointments to and the terms and conditions of service of the persons in the "service of Pakistan" are determined by or under Act of Parliament. Secondly, by virtue of Article 260 of the Constitution, 'service of Pakistan' means any service, post or office in connection with the affairs of the Federation. Thirdly, under Article 212(1) (a) of the Constitution, the exclusive jurisdiction to adjudicate disputes relating to the terms and conditions of persons, who are in the service of Pakistan vests in an Administrative Tribunal, namely, the Federal Service Tribunal. These tests are mentioned in the Muhammad Mubeen-us-Salam case



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Peshawar High Court

18 (21) 43

ibid (at pp. 686-689 of the law report).
The definition of the term 'civil servant' in the Act adopts the Constitutional criteria given in Article 260 noted above to reiterate that a person who, inter alia, holds a civil post "in connection with the affairs of the Federation" including any such post connected with defence, to be a civil servant. The larger Bench has in this respect taken the logical step to incorporate the requirements under Article 240 (a) and 260 of the Constitution as the definitional criteria of the term "civil servant" (at p. 682 of the law report).

7. Having noticed the qualifying criteria of a civil servant under the law, it is appropriate now to examine the factual matrix of the present controversy. The FC was established by the NWFP Constabulary Act, (Act-XIII) of 1915 ("Constabulary Act"). Section 3 of the Constabulary Act empowers the Federal Government to maintain the FC as a force "for the better protection and administration of the external frontiers of Pakistan within the limits of or adjoining North-West Frontier or any part thereof". Section 3-A of the Constabulary Act authorises the Federal Government to employ the FC outside the limits of or adjoining the North-West Frontier Province in other parts of Pakistan for

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Peshawar High Court

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the better protection and administration of those parts. Section 5(1) of the Act *ibid* vests the Federal Government with power to appoint the Commandant and other persons including the District Constabulary Officers or Assistant Constabulary Officers of the force in one or more districts. Section 6 delegates to the Commandant and District Constabulary Officer the power to appoint subordinate officers in the manner prescribed by Rules made under the Act. The Federal Government exercised its power conferred by Section 21 of the Constabulary Act, to frame the NWFP Constabulary Rules, 1958 ("Constabulary Rules"), in order to provide the terms and conditions of service of the officers and men in the FC.

8. It will be observed that the matter of terms and conditions of service of the respondent-employees of the FC, are in the first place regulated by the Constabulary Act and elaborated pursuant thereto by the FC Rules. The provisions made by the Constabulary Rules are in furtherance of and in exercise of the power conferred by the Constabulary Act. Therefore, the terms and conditions of service of the employees of the FC are prescribed

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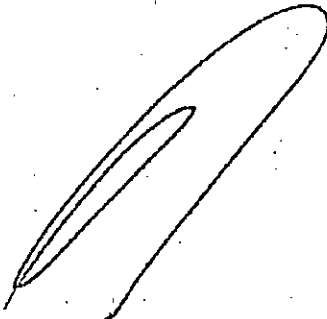
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Peshawar High Court**

21 (41) (45)

In the Act and the Rules. The test laid down in Article 240(a) of the Constitution requires that the appointment to and the terms and conditions of service of posts in connection with the affairs of the Federation and of a service of Pakistan shall be determined "by or under an Act of Parliament. The expression "by or under" in Article 240(a) of the Constitution authorizes the terms and conditions of service of a civil servant to be provided both by statute or by statutory rules. The provision made in the Constabulary Act and the Constabulary Rules, therefore, satisfy the Article 240(a) test. The judgment in the Muhammad Mubaen-us-Salam case ibid endorses this point of view:-

"86.... The terms and conditions of service of those employees, however, are required to be specified under Article 240 of the Constitution by or under Act of the Parliament. Thus, the conclusion would be that only those persons, who are in the service of Pakistan, as discussed hereinabove, and if their terms and conditions are governed either by a statute or statutory rules, in terms of Article 240 of the Constitution, can seek remedy before the Service Tribunals.."

27. Similarly, this Court in the case of Gul Munir vs. The

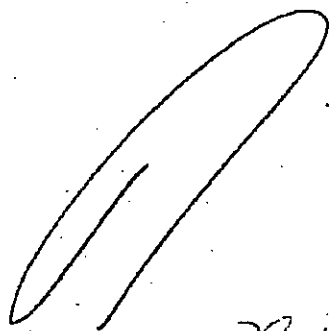


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Peshawar High Court

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Government of Pakistan through Secretary, Ministry of States and Frontier Regions (SAFRON), Islamabad and others (2019 PLC (C.S) 645), on the basis of law laid down by the Apex Court in Commandant, Frontier Constabulary Khyber Pakhtunkhwa, Peshawar's case (2018 SCMR 903), while dealing with the case of Federal Levies Force, which was established through Federal Levies Force Regulation, 2012 having the same structure of service for its employees/force as provided in Regulation No. 1 of 2014 has held that employees of the Federal Levies Force whose terms and conditions of service are governed under Federal Levies Force Regulation, 2012 are civil servants. Keeping in view the above, the Force established under Regulation No. 1 of 2014 qualifies the criteria of being civil servant in view of its composition, functions and duties as per law laid down by the Apex Court in the cases of Federation of Pakistan through Secretary, Ministry of Interior (Interior Division), Islamabad and 2 others



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Peshawar High Court

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vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081) and Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqlb Khan and others (2018 SCMR 903), thus, the preliminary objection raised by the learned counsels for the respondents is sustained and accordingly, the present petitions in view of clear bar contained in Article 212 of the Constitution are not maintainable. The present petitioners may agitate their grievances before the Provincial Services Tribunal. However, prior to this judgment, the status of present petitioners being a civil servant was not determined and in the similar cases, the Apex Court in Gul Raqlb Khan's case (2018 SCMR 903) has held that:

"11. It follows from the dicta laid down above that the protection of the border areas is a sovereign function belonging to and performed by the Federation. The same duty is performed equally in the present case by the FC not only on the frontiers of KPK Province but also by maintaining order in other parts of Pakistan. For discharging such functions, the

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Peshawar High Court

24 (4) (48)

services rendered by the FC have direct nexus with the affairs of the Federation. Therefore, the reasons given in the Muhammad Nazir case (supra) fully apply here as well and we hold that the employees of FC are civil servants. Insofar as the question of competent remedy in respect of service disputes of FC men is concerned, we hold that in a matter relating to the terms and conditions of service of the respondent-employees of the FC, an appeal before the Federal Service Tribunal is available to them as the exclusive remedy under the law. Accordingly, this remedy may be availed by them within the statutory period of limitation commencing from the date of issuance of certified copy of this judgment. All these appeals filed by the appellant-Commandant, FC are accordingly allowed in above terms".

When case of the petitioners (PATA Federal Levies Force) was examined in juxtaposition with the Provincial Levies Force and *ibid* judgment, we observed that service of both the forces is governed under the rules so framed under the provisions of "Provincial Administered Tribal Areas Levies Force Regulation,

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Peshawar High Court

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2012". Therefore, we believe that the status of petitioners is that of civil servants for all practical and material purposes, and as such, the matter of terms and conditions of their service squarely falls outside the ambit of writ jurisdiction of this court given the explicit bar contained in Article 212 of the Constitution. As earlier discussed service rules of the petitioners (PATA Federal Levies Force) and Provincial Levies Force both were framed under the provisions of "Provincial Administered Tribal Areas Levies Force Regulation, 2012" and through the *ibid* judgment, the personnel of Provincial Levies Force were declared as Civil Servants after exhaustively discussing the matter of Levies Force performing their duties in PATA. Therefore, on the same premise, we have no hesitation to hold that the petitioners are Civil Servants as their service fulfills the entire criteria of Civil Servants so provided by the law. Learned counsel representing the petitioners could

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Peshawar High Court

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not distinguish the status of petitioners (PATA Federal Levies Force) vis a vis Provincial Leavy Force in any manner. Both forces are performing their functions in the same area for the same object and; purpose, and both are being maintained through the provincial exchequer. Therefore, the matters arising out of the terms and; conditions of service of the petitioners are only amenable to the jurisdiction of the Service Tribunal in terms of Article 212 of the Constitution.

So far as the contention of petitioners that they have challenged the vires of the impugned Notification and as such the same are not amenable to the jurisdiction of the Service Tribunal is concerned, suffice it to state that it has long been settled that Service Tribunal has ample jurisdiction to deal with the issue of vires of the law and rules framed thereunder. 2015

SCMR 253 NATIONAL ASSEMBLY SECRETARIAT through Sectary V. MANZOOR AHMAD and others.

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27 (41) (51)

Therefore, the contention so agitated at the bar is misconceived and as such repelled.

In view thereof, the status of petitioners has been declared as that of Civil Servants and the matter in question revolves around the terms and; conditions of their service which does fall outside the jurisdiction of this court given the barring provision of Article 212 of the Constitution and as such instant petitions are dismissed; being not maintainable. However; the petitioners may approach the worthy Service Tribunal for the redressal of their grievance if so advised. Albeit, earlier the status of petitioners being civil servants was not determined, therefore, the petitioners may avail the remedy of appeal within the statutory period of limitation commencing from the date of issuance of the certified copy of this judgment in terms of the judgment of august apex court in *Gul Raqib Khan's case 2018 SCMR 903*.

COC Nos.38-M/2021 In
W.P.No.367-M/2021 and; COC No.436-

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Peshawar High Court

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P/2022 in W.P.No.1335-P/2022 are dismissed for having become infructuous.

L. Khan
JUDGE

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JUDGE

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JUDGE

S. M. Attique Shah

Announced.
Dt. 29/11/2022.
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HON'BLE MR. JUSTICE LAL JAN KHATTAK,
HON'BLE MR. JUSTICE S M ATTIQUE SHAH &
HON'BLE MR. JUSTICE SYED ARSHAD ALI

(AIR NIAN Court Secretary)

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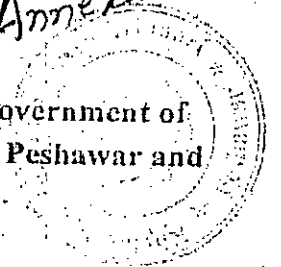
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Annexure - "G"



Service Appeal No.1916/2022 titled "Muhammad Salim Vs. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat at Peshawar and others"

ORDER

24th Aug. 2023

Kalim Arshad Khan, Chairman: Through this single order this appeal

and all the following connected appeals are being decided as all are against the same impugned Notifications No.SO(Police-II)HD/MKD/Levies/Misc./2020 dated 22.03.2021 and No.SO(Police-II)HD/1-3/FEDERAL LEVIES 2021 dated 20. 10.2021. Appeal Nos:1916/2022, 1917/2022, 1918/2022, 1919/2022, 1920/2022, 1921/2022, 1922/2022, 1923/2022, 1924/2022, 1925/2022, 1926/2022, 1927/2022, 1928/2022, 1929/2022, 1930/2022, 1931/2022, 1932/2022, 1933/2022, 1934/2022, 1935/2022, 1936/2022, 1937/2022, 1938/2022, 1939/2022, 1940/2022, 1941/2022, 1942/2022, 1943/2022, 1944/2022, 1945/2022, 1946/2022, 1947/2022, 1948/2022, 1949/2022, 1950/2022, 1951/2022, 1952/2022, 1953/2022, 1954/2022, 1955/2022, 1956/2022, 1957/2022, 1958/2022, 1959/2022, 1960/2022, 1961/2022, 1962/2022, 1963/2022, 1964/2022, 1965/2022, 1966/2022, 1967/2022, 1968/2022, 1969/2022, 1970/2022, 1971/2022, 1972/2022, 1973/2022, 1974/2022, 1975/2022, 1976/2022, 1977/2022, 1978/2022, 1979/2022, 1980/2022, 1981/2022, 1982/2022, 1983/2022, 1984/2022, 1985/2022, 1986/2022, 1987/2022, 1988/2022, 1989/2022, 1990/2022, 1991/2022, 1992/2022, 1993/2022, 1994/2022, 1995/2022, 1996/2022, 1997/2022, 1998/2022, 1999/2022, 2000/2022, 2001/2022, 2002/2022, 2003/2022, 2006/2022, 34/2023, 35/2023, 36/2023, 37/2023, 38/2023, 39/2023, 40/2023, 41/2023, 42/2023, 43/2023, 44/2023, 45/2023, 46/2023, 47/2023,

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Kalim Arshad Khan

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682/2023, 793/2023, 870/2023, 1175/2023, 1258/2023, 1259/2023,
1288/2023, 1289/2023, 1300/2023, 1372/2023 and Service Appeal No.
1538/2023,

2. In some of the appeals learned counsel for the appellants are present while some appellants are in person present. Mr. Muhammad Jan, District Attorney alongwith M/S Liaqat Ali DSP, Hakim Zada

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Superintendent, Muhammad Asim Khan Assistant, Parvez Khan Assistant and Sharif Ullah Assistant for respondents present.

3. It is noted with serious concern that nobody from the Home Department put appearance. Copy of this order be thus sent to the Worthy Chief Secretary, Khyber Pakhtunkhwa and Worthy Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa for information.

4. The matter was heard on more than one dates and could not be decided because of pendency of a CP No.818/2023 before the august Supreme Court of Pakistan. During the course of arguments on some previous dates, Dr. Adnan Khan learned counsel for some of the appellants had informed the Tribunal that the petitioners, who had approached the august Supreme Court of Pakistan, against the judgment of Hon'ble Peshawar High Court, in Writ Petition No.363-M of 2021 dated 29.11.2022, had submitted application for withdrawal of the CP from the august Supreme Court of Pakistan. The august Supreme Court was pleased to dismiss the CP as withdrawn on 07.06.2023. Today, Mr. Taimur Haider, Advocate/counsel for the appellant in Service Appeal No. 162/2023, produced copy of an Act of the Provincial Assembly, named, "The Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021" in to which a new section, Section-11 was added, which is reproduced as under:

"11. Reinstatement of the levies personnel. — All levies personnel, who have been retired from the Force, with effect from 22.03.2021, till the commencement of the Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021 shall be reinstated in the Force as regular employees, with effect from their respective dates of retirement and they shall be deemed as never retired from the Force."

Page 2


Taimur Haider


M. Asim Khan
24.08.2023

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When confronted with the provisions of the newly added Section-11 of the Act of 2021, whereby, all Levies personnel, who had retired from the Force w.e.f 22.03.2021 till the commencement of the Act i.e. 30.11.2021, were reinstated as regular employees w.e.f respective dates of retirement and were deemed to have never retired from the Force, the learned counsel was very fair to say that there was nothing more to be resolved by this Tribunal in these appeals, so is the agreement of other learned counsel as well as appellants present before the Tribunal, because by promulgation of the above Act especially insertion of new Section-11, whereafter, both the impugned Notifications no more remained effective. They, however, contend that even the provisions of the Act were not be complied with/implemented by the respondents. They say they would approach the proper forum for giving effect to/implementation of the provisions of Section-11 of the Act of 2021 and in case their grievances are not addressed in accordance with the terms of the Act, they would recourse to further legal remedies available to them. Disposed of in the above terms. (Copies of this order be placed in all connected appeals).
 Consign.

5. *Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of August, 2023.*

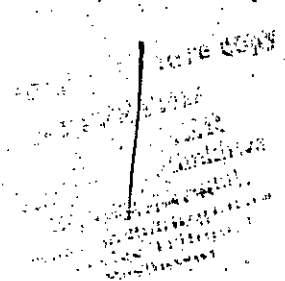

 (Salah-Ud-Din)
 Member (J)

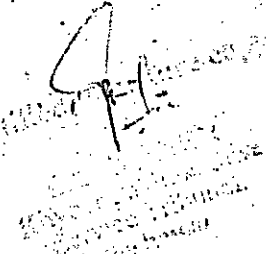

 (Kalim Arshad Khan)
 Chairman

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EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 30th NOVEMBER, 2021.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 30th NOVEMBER, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-192/2021/8536.— The Provincially Administered Tribal Areas Levies Force (Amendment) Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 22nd NOVEMBER, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 26th NOVEMBER, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE PROvincially ADMINISTERED TRIBAL AREAS LEVIES FORCE (AMENDMENT) ACT, 2021.
(KHYBER PAKHTUNKHWA ACT NO. XXIV OF 2021)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 30th November, 2021).*

AN
ACT

to amend the Provincially Administered Tribal Areas Levies Force Regulation, 2012

WHEREAS it is expedient to amend the Provincially Administered Tribal Areas Levies Force Regulation, 2012.

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

1. Short title and commencement.—(1) This Act may be called the Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021.

(2) It shall come into force with effect from 22.03.2021.

2. Insertion of new section to the Khyber Pakhtunkhwa Regulation No. 1 of 2012.—In the Provincially Administered Tribal Areas Levies Force Regulation, 2012 (Khyber Pakhtunkhwa Regulation No. 1 of 2012), after section 10, the following new section shall be added, namely:

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Annexure- "H"

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"11. Re-instatement of the levies personnel.— All levies personnel, who have been retired from the Force, with effect from 22.03.2021, till the commencement of the Provincially Administered Tribal Areas Levies Force, (Amendment) Act, 2021, shall be reinstated in the Force, as regular employees, with effect from their respective dates of retirement and they shall be deemed as never retired from the Force."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(KIFAYAT ULLAH KHAN AFRIDI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa

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

Fazal Shah
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بند متعلقہ ایجنسی کے سربراہان کی طرف سے

مذکورہ ایجنسی کے سربراہان کی طرف سے جاری کی گئی ہے۔

مذکورہ بالا

(1) یہ کہ سائل ڈسٹرکٹ ایجوکیشن آفیسر کے دفتر میں بطور سپلائی ڈپوٹی سرانجام دیا گیا ہے۔
(2) یہ کہ سائل کی طرف سے مورخہ 22/03/2023 اور 21/03/2023 کو دو عدد نوٹیفکیشن جاری

ہوئے تھے۔
(3) یہ کہ سائل ڈسٹرکٹ ایجوکیشن آفیسر کے دفتر میں بطور سپلائی ڈپوٹی سرانجام دیا گیا ہے۔

(4) یہ کہ سائل ڈسٹرکٹ ایجوکیشن آفیسر کے دفتر میں بطور سپلائی ڈپوٹی سرانجام دیا گیا ہے۔
مورخہ 22/03/2023 اور 21/03/2023 کو دو عدد نوٹیفکیشن جاری کیے گئے۔
اس کے تحت ایجنسی کے سربراہان کی طرف سے ایجنسی کے سربراہان کی طرف سے

The provincially administered Tribal area Levy Force Act.
میں ایجنسی کے سربراہان کی طرف سے ایجنسی کے سربراہان کی طرف سے
مورخہ 22/03/2023 اور 21/03/2023 کو دو عدد نوٹیفکیشن جاری کیے گئے۔
اس کے تحت ایجنسی کے سربراہان کی طرف سے ایجنسی کے سربراہان کی طرف سے

ایجنسی کے سربراہان کی طرف سے ایجنسی کے سربراہان کی طرف سے
مورخہ 22/03/2023 اور 21/03/2023 کو دو عدد نوٹیفکیشن جاری کیے گئے۔

مورخہ: 01-09-2023

Signature


مذکورہ

مذکورہ

مذکورہ ایجنسی کے سربراہان کی طرف سے

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7/20/23

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(61)

Amended - J



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

No. SO(L&K/HD/Malakandi/227-40
Dated Peshawar the 05-10-2023

To

1. The Secretary, Finance Department, Govt of Khyber Pakhtunkhwa
2. Secretary, Establishment Department, Govt of Khyber Pakhtunkhwa
3. Secretary, Law Department Govt of Khyber Pakhtunkhwa
4. All Deputy Commissioners/Commandant Levy Force

Subject:

MINUTES OF THE MEETING ON DECISION OF SERVICE TRIBUNAL
DATED 24.8.2023 IN SERVICE APPEAL NO.162/2023 TITLED
MUHAMMAD JAMAL AND OTHERS VS GOVT

Dear Sir,

In connation of this office letter No. even dated 18.09.2023 on the subject noted above, I am directed to enclose herewith minutes of the meeting held on 26.9.2023 in Home & TAs Department Peshawar for information/necessary action, please.

Yours sincerely

(Niaz-Muhammad)
Section Officer (L & K)

Copy to:

1. PS to Secretary, Home & TAs Department, Peshawar Khyber Pakhtunkhwa
2. PS to Special Secretary-1, Home & TAs Department
3. PA to Additional Secretary (Police/L&K), Home & TAs Department

Section Officer (L & K)

7/10/2023

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MINUTES OF THE MEETING dated 26-09-2023 ON DECISION OF
THE SERVICE TRIBUNAL DATED 24-08-2023 IN SERVICE APPEAL
NO. 162/2023, TITLED MOHAMMAD JAMAL AND OTHERS VS.
GOVERNMENT OF KHYBER PAKHTUNKHWA

The meeting was started with the recitation of verses from the Holy Quran.

At the outset, the Chair welcomed the participants and apprised them that the meeting was held pursuant to the requests of the Deputy Commissioners to the department regarding the recent Order of the Khyber Pakhtunkhwa Service Tribunal in respect of the reinstatement of levies personnel into the service.

List of participants attached.

After opening remarks by the worthy Special Secretary-I Khyber Pakhtunkhwa Home and Tribal affairs Department, he was briefed on the Levies Force functioning in different districts of Khyber Pakhtunkhwa regulating under PATA Federal Levies Force Service (Amended) Rules, 2013 amended from time to time. The last two amendments were brought on 22-03-2021 and 21-10-2021 vide Notifications No. SO(POLICE-II)HD/MKD/1-3/LEVIES/Misc./2020 and SO(POLICE-II)HD/1-3/FEDERAL LEVIES 2021 of Kyber Pakhtunkhwa Home and Tribal affairs Department respectively. Both Notifications No. SO(POLICE-II)HD/MKD/1-3/LEVIES/Misc./2020 and SO(POLICE-II)HD/1-3/FEDERAL LEVIES 2021 of Kyber Pakhtunkhwa Home and Tribal affairs Department have laid down the criteria for retirement of the Federal Levies Force.

Moreover, it was briefed that Section-11 of the PATA Levies Force (Amendment) Act-2021 was brought on 30-11-2021 to reinstate all levies Personnel retired from 22-03-2021 till the commencement of the Act. Section-11 is reproduced here.

"Re-instatement of the levies personnel --- All levies personnel, who have been retired from the Force with effect from 22-03-2021, till the commencement of the Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021 shall be reinstated in the Force as regular employees, with effect from their respective dates of retirement and they shall be deemed as never retired from the Force."

After briefing to the Chair, the forum was opened for discussion to deliberate on reinstatement of levies personnel under Section-11 of the Act in light of the Judgment of the Honourable Peshawar High Court, Mingora Bench in writ petitions no. 1281-M/2022 and 1283-M/2022 dated: 23-11-2022, legal opinion of the Advocate General, Khyber Pakhtunkhwa on Malakand Levies dated: 17-06-2023 and Order of Honourable Khyber Pakhtunkhwa Service Tribunal in appeal No. 162/2023 dated: 24-08-2023.

The Judgment of the Honourable Peshawar High Court, Mingora Bench in writ petitions No. 1281-M/2022 and 1283-M/2022 was discussed. The following paras of the Judgment are reproduced here:

Page 1 of 3

Muhammad Shahr

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para 05 of the Honourable High Court Judgment.

There is no dispute amongst the parties that the present petitioners were retired on 25-03-2021 as by then those petitioners who were Sepoy rank attained the age of 42 years and those petitioners who were Lance Naik, Naik and Havildar completed three years of service as Lance Naik, Naik and Havildar. In the operation of the Federal Levies Service (Amended) Rules 2013 R&W notified dated: 21-10-2021, the aforesaid criteria has been provided for the retirement of different categories of the employees of Levies Force.

And para 07 of the Honourable High Court Judgment reproduced here

"Accordingly, both these connected writ petitions bearing No 1281-M of 2022 and 1283-M of 2022 are allowed and the petitioners are reinstated in service of the Levies Force with effect from the date of their retirement and it shall be deemed that they have never been retired and consequently the respondents are directed to issue formal orders of their reinstatement in service in light of Section 11 of the Act of 2021. Order accordingly."

The forum discussed legal opinion solicited on Malakand Levies from Advocate General, Khyber Pakhtunkhwa regarding the reinstatement of retired Levies personnel. Some part of the opinion reproduced here:

"It is worth mentioning that after the 25th Constitutional Amendment in 2018 both FATA and PATA were merged in the Province of Khyber Pakhtunkhwa and the Federal Levies Force working in FATA was merged into the regular Police Force of the Province, however, levies force in Malakand Division is still regulated by PATA Federal Levies Force Service (Amended) Rules, 2013 in view of the Khyber Pakhtunkhwa Act No. 111 of 2019 through which the laws prevalent in erstwhile PATA at the time of 25th Constitutional Amendment were allowed to continue including PATA Levies Force Regulation 2012. It is pertinent to mention here that PATA Federal Levies Service Rules, 2013 were amended from time to time and the last amendment was brought on 21-10-2021, therefore all those personnel who are conditionally reinstated in compliance of the Judgment of the Honourable Peshawar High Court, Mingora Bench shall be governed under the PATA Federal Levies Force Service (Amended), 2013 as amended lastly on 21-10-2021."

The Order of the Khyber Pakhtunkhwa Service Tribunal was also discussed by the forum

The para of the Order reproduced here.

"When confronted with the provisions of the newly added section 11 of the Act of 2021, whereby, all Levies personnel, who had retired from the Force w.e.f 22-03-2021 till the commencement of the Act i.e 30-11-2021, were reinstated as regular employees w.e.f from respective dates of retirement and were deemed to have never retired from the Force. The learned counsel was very fair to say that there was nothing more to be resolved by this Tribunal in these appeals, so as the agreement of other learned counsels as well as appellants present before the

J. Saad Shah

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... again, because by the promulgation of the above Act especially insertion of new Section 11, whereafter, both the above notifications no more remained effective. They, however, contend that even the provisions of the Act were not complied with/implemented by the respondents. They say they would approach the proper forum for giving effect to/implementation of the provisions of Section 11 of the Act of 2021 and in case their grievances are not addressed in accordance with the terms of the Act, they would recourse to further legal remedies available to them. Disposed of in the above terms."

Following the detailed deliberations on the above points, the forum arrived to the conclusion that;

The Judgment of the Honorable Peshawar High Court, Mingora Bench had reinstated the levies personnel and had directed the respondents to issue their formal orders of reinstatement into the Service.

Both the Judgment of Honorable Peshawar High Court Mingora Bench as well Khyber Pakhtunkhwa Service Tribunal were examined in detail. Whereas the Judgment of the Honorable Peshawar High Court Mingora Bench carries clear order with regard to reinstatement of the appellants, the Judgment of Khyber Pakhtunkhwa Service Tribunal is advisory in nature and does not direct the Government for reinstatement of the appellants. Rather it asks for compliance of our own amendment Act passed on 30-11-2021

Moreover, Advocate General, Khyber Pakhtunkhwa in his legal opinion had categorically stated that all those Personnel who are conditionally reinstated into the service in compliance with the Judgment of the Honorable Peshawar High Court Mingora Bench shall be governed under the PATA Federal Levies Service Rules, 2013 as amended on 21-10-2021

After detailed deliberations and threadbare discussion, the following decisions were taken by the forum:

- 1 To examine the cases of all those Levies Personnel retired under the PATA Federal Levies Force Service (Amended) Rules 2013 as amended on 22-3-2021 in light of Schedule-III of the PATA Levies Force (Amended) Act 2021 effective from 30-11-2021 and reinstate them in the service in compliance with both orders of Honorable Courts after checking their eligibility under the amended Act-2021. Similarly the cases of those already reinstated in compliance with court order may be examined under the FATA Federal Service Rules, 2013 as amended on 21-10-2021 and retire them under the said amended rules.
- 2 The Deputy Commissioners concerned to carefully prepare and send case for creation of supernumerary posts for reinstatement and adjustment of the levies retired under the previous rules in compliance with court orders, if they do not have vacant posts for their reinstatement.

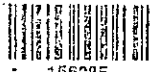
Meeting ended with the vote of thanks from and to the chair.

[Handwritten signature]

11/11/21

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62609

No F. 10(5)-LK/2006
Government of Pakistan's
Ministry of States & Frontier Regions

Islamabad the 11th November, 2015.

The Secretary,
Home & Tribal Affairs Department,
Government of Khyber Pakhtunkhwa,
PESHAWAR.

Subject:- RULES FOR FEDERAL LEVIES WORKING IN SETTLED DISTRICTS.

9221/c

I am directed to refer to Home & Tribal Affairs Department, Khyber Pakhtunkhwa letter No. F. SO(Levies)HD/F.SD/1-2/2013/(62609), dated 19th May, 2015 on the subject noted above.

2. It is to clarify that PATA Federal Levies Force Regulation/Service Rules, 2012 and Amended Service Rules, 2013 are also applicable on the Federal Levies Force stationed in Settled District of Khyber Pakhtunkhwa, with effect from the date of Notification i.e. 04th February, 2013.

3. This issues with the approval of Secretary, Ministry of States & Frontier Regions, Islamabad.

(MUHAMMAD KHAN BABAR)
Section Officer (LK&B)
Tele:- 9217050

DSP ✓
SO (L&B)

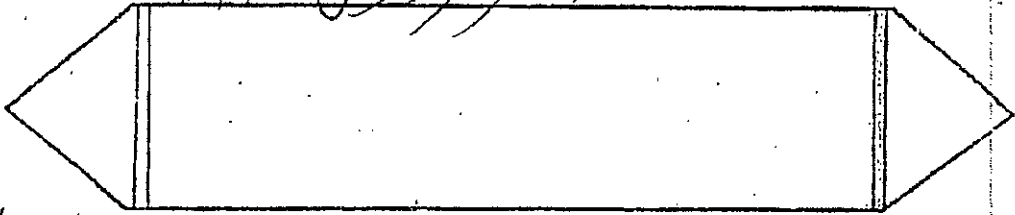
ASP
17/11

Fahim Khan

put up L&B
17/11/15

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بعدالت سرپرست گھوٹل KPK



22 جناب Petitioner
عارف سعید بنام گورنمنٹ

موزع
مقدمہ
دعویٰ
نمبر

باعث تحریر آئنگہ

مقدمہ بند درجہ عدالت عالیہ بالا میں اپنی نظر آئے سے واسطے پیروی اور جواب دہی وکیل کارروائی متعلقہ
آج مقام سپریم کورٹ کیلئے سرپرست گھوٹل اور ڈیپٹی سیکرٹری اور ڈیپٹی سیکرٹری

مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے کے وقت رٹا لیتے وقت فیصلہ بر حلقہ دیئے جناب دہی اور اقبال دعویٰ اور
بہ صورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
اور اس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کیلئے یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل تفرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سامانہ
برداشتہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائز التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
نہ کو کر کریں۔ لہذا عدالت نامہ لکھ دیا کہ سند ہے۔

المترقون 22 ماہ 12 2023

Attest
Accepted
Said State
[Signature]

عارف سعید وکیل باندہ ادساہ
سکند گزوی آئنگہ تحصیل شندھوٹی ضلع گجرات