

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 11919/2020

Muhammad Jan S/O Bakht Pur Jan. Presently posted as Naib Subedar/Assistant Sub-Inspector (BPS-14) erstwhile Bajaur Khasadar/Khyber Pakhtunkhwa Police District Bajaur.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through the Secretary, Home & Tribal Affairs Department Islamabad and 04 others. *(Respondents)*

Service Appeal No. 11920/2020

Hazrat Tariq S/O GulZeb Khan. Presently posted as Naib Subedar/Assistant Sub-Inspector (BPS-11) erstwhile Bajaur Khasadar/Khyber Pakhtunkhwa Police District Bajaur.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through the Secretary, Home & Tribal Affairs Department Islamabad and 04 others. *(Respondents)*

Service Appeal No. 11921/2020

Kamin Bacha S/O Bahadar Khan. Presently posted as Subedar/Sub-Inspector (BPS-14) erstwhile Bajour Khasadar/Khyber Pakhtunkhwa Police District Bajaur.

(Appellant)

Versus

Government of Khyber Pakhtunkhwa through the Secretary, Home & Tribal Affairs Department Islamabad and 04 others. *(Respondents)*

Present:

Muhammad Ashfaq Khan Akhunkhail.....For the appellants
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

.....

Date of presentation of Appeals.....13.10.2020

Date of Decision.....23.01.2024

CONSOLIDATED JUDGMENT

SALAH-UD-DIN, MEMBER: This single judgment will dispose of the above titled service appeals as common questions of law and facts are involved therein.

2. The appellants have invoked the jurisdiction of this Tribunal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer copied as below:-

“On acceptance of this service appeal, the impugned order may kindly be set-aside and respondents may graciously be directed to allow the appellant to complete his sixty years statutory service to meet the ends of justice.

Any other relief which this Hon’ble Tribunal deems appropriate in law, equity and justice may also be granted to the appellant in the best interest of justice”

3. Precise averments raised by the appellants in their appeals are that they were appointed as Sepoys in Bajaur Khasadar Force. During the course of service, the appellants namely Muhammad Jan and Hazrat Tariq were promoted to the rank of Naib Subedar, while the appellant namely Kamin Bacha was promoted to the rank of Subedar vide office order dated 26.01.2012. In wake of promulgation of 25th Constitutional Amendment, Federally Administered Tribal Areas (FATA) was merged in the Province of Khyber Pakhtunkhwa and the Khasadar Force working in the said areas lost its status for working in the merged districts and sub-divisions. In order to give legal status to the Khasadar Force in the merged districts and to revisit their institutional structure and functional assignments for effective discipline and better performance, the worthy Governor of Khyber Pakhtunkhwa, while



exercising powers under Article 128 of the Constitution of Islamic Republic of Pakistan, promulgated the Khyber Pakhtunkhwa Khasadar Force (Maintenance, Regulation and Protection of Service) (Transition) Ordinance, 2019 on 12th March 2019. Vide directive No. SO-IV/CMS/2019/2987-89 dated 04.04.2019, the worthy Chief Minister Khyber Pakhtunkhwa desired to merge all the Levies and Khasadar Force of the merged area into Khyber Pakhtunkhwa Police within six months. In compliance of the said directives, Inspector General of Police issued office order No. 581/PA/AIG/E dated 09.04.2019, whereby all members of Levies force were absorbed in Khyber Pakhtunkhwa Police and their ranks were re-designated vide office order dated 29.05.2019. The appellants invoked the jurisdiction of Peshawar High Court, Peshawar by way of filing Writ Petitions. During pendency of the Writ Petitions filed by the appellants, Khyber Pakhtunkhwa Khasadar Force Act, 2019 was promulgated and published in official gazette on 16.09.2019. Similarly, the government of Khyber Pakhtunkhwa framed Khasadar Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019, which were notified on 24.09.2020. The Writ Petitions filed by the appellants were disposed of vide judgment dated 06.02.2020, whereby with the consent of the parties, the Writ Petitions were sent to Secretary Home KP for treating the same as departmental appeals and to decide it within 20 days in accordance with law and until then status-quo was ordered to be maintained. Vide Notification dated 14.07.2020 issued by Government of Khyber Pakhtunkhwa Home Department, the Federal Levies Force (Amended)



Rules, 2013 were amended and in wake of such amendments, all levies personal shall retire 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. Despite the aforementioned amendment in the rules, departmental appeals of the appellants were dismissed vide the impugned orders dated 06.10.2020. The respondents issued Notification dated 10.02.2020, whereby all the members of the force were absorbed in the Khyber Pakhtunkhwa Police but the appellants were not absorbed, constraining them to file appeals before this Tribunal.

4. On receipt of the appeals and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeals by way of filing written replies raising therein numerous legal as well as factual objections.

5. Learned counsel for the appellants has addressed his arguments supporting the grounds agitated by the appellants in their service appeals. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellants and has supported the comments submitted by the respondents.

6. Arguments have already been heard and record perused.

7. A perusal of the record would show that the appellants had joined Khasadar Force of Bajaur Agency located in erstwhile Federally Administered Tribal Areas (FATA). During the course of their service, the appellants namely Muhammad Jan and Hazrat Tariq got promoted to the ranks of Naib Subedar, while appellant namely Kamin Bacha reached the rank of Subedar. In wake of 25th Constitutional

Amendment, Federally Administered Tribal Areas were merged in the Province of Khyber Pakhtunkhwa and the Khasadar Force which was established in the erstwhile Federally Administered Tribal Areas through Executive Orders and instructions, for management of the said areas within the framework of territorial and collective responsibility, lost their legal status, for working in the merged districts and sub-divisions, therefore, in exercise of powers conferred by Clause (I) of Article 128 of the Constitution of Islamic Republic of Pakistan, 1973, the Governor of the Khyber Pakhtunkhwa promulgated Khyber Pakhtunkhwa Khasadar Force (Maintenance, Regulation and Protection of Service) (Transition) Ordinance, 2019. Later on, the Khyber Pakhtunkhwa Khasadar Force Act, 2019 (hereinafter referred to as the Act) was promulgated and published in the official gazette on 16.09.2019. Clause (a) of sub-section (2) of Section 13 of the Act has provided that existing terms and conditions of service of the Khasadar Force unless amended through substitute rules or instrument would not be affected by promulgation of the Act or any provision thereof, unless specifically provided otherwise. For sake of convenience, sub-section (2) (a) of Section 13 of the Act is reproduced as below:-

“Removal of difficulty.---(1) -----

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

(a) the existing terms and conditions of service of the Khasadar Force unless amended through a substitute rule or instrument;

(b)-----

(c)-----

8. Section-10 of the Act provided that government may make rules for carrying out the purposes of the Act and vide Notification dated

24.09.2019, the provincial Government promulgated Khasadar Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019. The Khasadar Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019 were though framed under Section-10 of the Act, however no period of retirement has been provided in the new rules. Similarly, Rule-7 of the Khasadar Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019 provided that all rules, orders or instruments etc, in force in respect of Khasadar Force immediately before the commencement of the rules would be deemed repealed, so far as those rules orders or instructions were inconsistent with the new rules. It means that the earlier rules would also hold the field except in cases of inconsistency with the new rules of 2019. For sake of convenience, sub-rule (1) of Rule-7 of Khasadar Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019 is reproduced as below:-

“Repeal and savings---(1) All rules, orders or instructions, including the Federal Khasadar Force Service, Rules, in force in respect of the Khasadar Force, immediately before the commencement of these rules, shall be deemed as repealed in so far those rules, orders or instructions are inconsistent with these rules. (Emphasis supplied).

(2)-----

9. In such a situation, when the new rules did not provide any age of retirement other than one provided in the earlier rules, the period of retirement mentioned in the earlier rules shall prevail. Section-7 (ii) (iii) of Service Rules for Khasadar (Amended) Rules, 2011 provided that Naib Subedar as well as Subedar shall be retired on attaining the age of

55 years or completion of 30 years service or on completion of rank tenure of 5 years, whichever is earlier.

10. The appellants in support of their contention have relied on Notification dated 14.07.2020 also by contending that through amendment so made in Rule-17 of the Federal Levies Force (Amended) Service Rules, 2013 the age of retirement is to be considered as 60 years. The said notification is reproduced as below:-

Notification

Dated Peshawar the 14/07/2020

No. SO(Police-II)HD/1-3 In exercise of the powers conferred by Section-9 of the provincially Administered Tribal Areas Levies Force Regulation 2012, the Government of the Khyber Pakhtunkhwa is pleased to direct that the Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013, the following further amendments shall be made namely. (Emphasis supplied).

Amendments

In the said rules:-

(a) For rule 17, the following shall be substituted namely

*"17. **Retirement** ---All levies personal shall retire from service on attaining the age of superannuation i.e sixty (60) years of they may opt for retirement after completion of twenty-five (25) years regular service". end*

(b) Schedule-III shall be deleted.

SECRETARY TO
GOVT OF KHYBER PAKHTUNKHWA
HOME DEPARTMENT

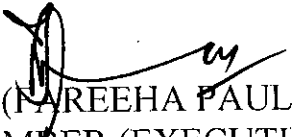
11. It is evident from perusal of the above reproduced Notification dated 14.07.2020 that the same pertains to Levies Force of


Provincially Administered Tribal Areas (PATA), while the appellants were employees of Khasadar Force of Federally Administered Tribal Areas (FATA). The Notification dated 14.07.2020 is thus at all not applicable to the appellants.

12. The contentions of the appellants that they were absorbed in Khyber Pakhtunkhwa Police is having no force as they have themselves mentioned in their memoranda of appeals that vide Notification dated 10.02.2020, all members of Khasadar Force were absorbed in the Khyber Pakhtunkhwa Police except the appellants. The plea of the appellants that their age of retirement has to be considered as 60 years like other civil servants is misconceived as the same is not covered under the Act or rules made there under.

13. In view of the foregoing discussion, the appeals being devoid of merits are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
23.01.2024


(NAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

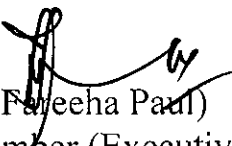
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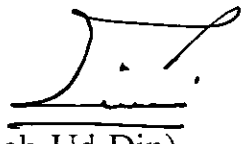
ORDER
23.01.2024

Appellant in person present. Mr. Muhammad Zada, Assistant
alongwith Mr. Muhammad Jan, District Attorney for the
respondents present. Arguments have already been heard and record
perused.

Vide our detailed judgment of today, separately placed on
file, the appeal in hand being devoid of merits is hereby dismissed.
Parties are left to bear their own costs. File be consigned to the
record room.

ANNOUNCED
23.01.2024


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

Naeem Amin