

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

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

Service Appeal No. 11922/2020

Muhammad Jan S/O Sher Azam Khan. Presently posted as Subedar/Police Sub-Inspector (BPS-14) erstwhile Bajaur Levies/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. 11923/2020

Aman Ullah S/O Bacha Khan. SHO Police Station Nawagi, District Bajaur, merged Tribal District Bajaur Erstwhile FATA. (*Appellant*)

Versus

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


Service Appeal No. 11924/2020

Dilawar Khan S/O Zigravar Khan. Presently posted as Subedar/Police Sub-Inspector (BPS-14) erstwhile Bajour Levies/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. 11925/2020


Gulzar Khan S/O Mahib Ullah, Deputy Superintendent Police in the office of DPO Bajaur, at Timergara merged Tribal District Bajaur Erstwhile FATA. (*Appellant*)

Versus

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

Service Appeal No. 11926/2020

Munir Zada S/O Gul Amin, SHO Police Station Khar, District Bajaur, merged Tribal District Bajaur Erstwhile FATA. (*Appellant*)

Versus

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

Service Appeal No. 11927/2020

Sattar S/O Talib, Deputy Superintendent Police in the Office of DPO
Bajaur, at Timergara merged Tribal District Bajaur Erstwhile FATA.
(Appellant)

Versus

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

Present:

Muhammad Ashfaq Khan Akhunkhail.....For 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 Levies. During the course of
service, the appellants namely Muhammad Jan, Aman Ullah and
Munir Zada were promoted to the rank of Subedar vide orders

dated 28.08.2014, while the appellant namely Dilawar Khan was promoted to the rank of Subedar vide order dated 01.01.2015, whereas the appellants namely Sattar and Gulzar Khan were promoted to the rank of Subedar Major vide office orders dated 06.07.2017. In wake of promulgation of 25th Constitutional Amendment, Federally Administered Tribal Areas (FATA) was merged in the Province of Khyber Pakhtunkhwa and the Federal Levies Force established under the Federal Levies Force Regulation, 2012 lost its status for working in the merged districts and sub-divisions. In order to give legal status to the Federal Levies 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 Levies Force (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 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 respondents were going to make compulsory/pre-mature retirement of the appellants under the Federal Levies Force (Amended) Service Rules, 2013 which had already been repealed by the Khyber Pakhtunkhwa Levies Force (Transition) Ordinance, 2019, therefore, the



appellants invoked the jurisdiction of Peshawar High Court, Peshawar by way of filing Writ Petitions. During the pendency of the said Writ Petitions, Khyber Pakhtunkhwa Levies Force Act, 2019 was passed and published in official gazette on 16.09.2019. Similarly, Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019, were also framed by the government of Khyber Pakhtunkhwa and were notified on 24.09.2020. The Writ Petitions filed by the appellants were disposed of by Peshawar High Court, Peshawar vide judgment dated 06.02.2020, whereby with the consent of the parties, the Writ Petitions were sent to Secretary Home Khyber Pakhtunkhwa 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 without any legal reason, constraining them to file the 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. The appellants had joined Bajaur levies Force of Bajaur Agency located in erstwhile Federally Administered Tribal Areas (FATA). During the course of their service, the appellants namely Muhammad Jan, Aman Ullah, Dilawar Khan and Munir Zada got promoted to the ranks of Subedar, while rest of the appellants reached the ranks of Subedar Major. In wake of 25th Constitutional Amendment, Federally Administered Tribal Areas were merged in the Province of Khyber Pakhtunkhwa and Federal Levies Force established under the Federal Levies Force Regulation, 2012 working in the said areas lost their legal status for working in the merged districts and sub-divisions, therefore, in exercise of the powers conferred by Clause (1) of Article 128 of the Constitution of Islamic Republic of Pakistan, 1973, the Governor of the Khyber Pakhtunkhwa promulgated Khyber Pakhtunkhwa Levies Force (Transition) Ordinance, 2019. Section-9 of the said Ordinance was with regard to absorption of members of the Levies Force in the in the Police. Sub-section (2) of Section-9 provided as below:-

“ Absorption.---(1).....

(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 (Service) Rules, 2012.”

8. The Khyber Pakhtunkhwa Levies Force Act, 2019 (hereinafter referred to as the Act) was then promulgated and notified in the official gazette on 16.09.2019. Sub-Section (2) of Section-9 of the said act is reproduced as below:-

“ Absorption.---(1).....

(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.”(Emphasis Supplied)

9. Similarly, Section-15 of the Act is regarding repeal and savings, which is reproduced as below:-

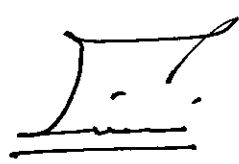
“Repeal and savings.---(1) The Federal Levies Force Regulation,2012and the Khyber Pakhtunkhwa Levies Force Ordinance, 2019 (Khyber Pakhtunkhwa Ordinance No.III of 2019) are hereby repealed.

(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 there under until new rules are made under this Act. (Emphasis supplied).

(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.”

10. According to Sub-Section (2) of Section-9, members of the Levies Force until their absorption in the Police were to be governed by their existing terms and conditions of service under the Federal Levies Force (Amended) Service Rules, 2013. Although, Federal Levies Force

Regulations, 2012 was repealed by sub-section (1) of Section-15 of the Act but sub-section (2) of the said Act provided that notwithstanding the repeal of the Federal Levies Force Regulation, 2012, 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 there under until new rules are made under the Act. Section-11 of the Act provided that government may make rules for carrying out the purposes of the Act and thus on 24.09.2019 the Government of Khyber Pakhtunkhwa promulgated Levies Force (Absorption in Khyber Pakhtunkhwa Police) Rules, 2019. For sake of convenience, sub-rule (1) of Rule-7 of the said Rules is reproduced as below:-



“Repeal and Savings.--- (1) All rules, orders or instructions including the Federal Levies Force Services Rules, in force in respect of the Levies 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)

11. Sub-section (1) of Rule-7 provided that all rules, orders or instructions including the Federal Levies Force Services Rules, in force in respect of the Levies Force immediately before the commencement of these rules would be deemed as repealed, in so far as those rules, orders or instructions are inconsistent with new rules. It clearly shows that the earlier rules would also hold field except in case of inconsistency with the new rules. The new rules did not provide the age of retirement and in such eventuality, the members of Levies Force were to be governed by Federal Levies Force (Amended) Service Rules, 2013. According to

Rule-17 of the said rules, all Levy personal shall retire as per Schedule-IV and no extension in service beyond retirement shall be granted. Scheduled-IV of the said rules provides that Subedar Major has to retire on 38 years service or 03 years service as Subedar Major or 60 years of age whichever is earlier, while Subedar was to be retired on 35 years service or 05 years service as Subedar or 60 years of age whichever is earlier. Neither the Act nor any rules framed there under provided that the age of superannuation shall be 60 years.

12. 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. For the sake of convenience, 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**


13. 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 Ex-Levies Force of Federally Administered Tribal Areas (FATA). The Notification dated 14.07.2020 is thus at all not applicable to the appellants.

14. 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 Levies 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.

15. 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


(FARZEHA PAUL)
MEMBER (EXECUTIVE)

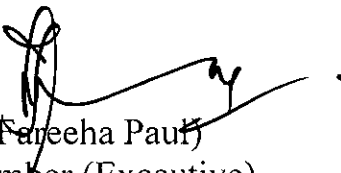

(SALAH-UD-DIN)
MEMBER (JUDICIAL)


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 Paur)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)