

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In Service Appeal No 11924/2020

Dilawar Khan

VERSUS

Govt. of Khyber Pakhtunkhwa & others

REJOINDER ON BEHALF OF APPELLANT TO
THE COMMENTS FILED BY RESPONDENT NO.
01 TO 05

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X


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Appellant

Through

Dated: ~~12/11/2021~~
21/11/2022


M. Ashfaq Khan Akhunkhail
&


Mujeeb Ullah
Advocate High Court,
Peshawar

①

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01 TO 05

Respectfully Sheweth:

Rejoinder to the Preliminary Objections:

All preliminary objections raised from Para No.1 to 6 are vague, evasive and without any substance, hence, denied. However, the Appellant being civil servant with in meaning of **Section 2 (1) (b) of KP Civil Servant Act, 1973**, has approached this Hon'ble Court inter alia on following grounds.

- i. The Appellant is performing his duty as regular employee of the Respondent's Department and is getting **his salaries** along with responsibilities directed by the Provincial Police Officer.
- ii. In pursuance of promulgation of the KP Levis (Transition ordinance 2019), the Respondent No.4 vide office order dated 8/4/2019 **awarded shoulder promotion to the Appellant** like other similar placed employees under the prevailing Police Laws and performing his duty as **Inspector Police**

Copy of office order dated 8/4/2019 is already annexed as annexure J at page 36 of the main appeal.

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- iii. Above all, the question of maintainability of Appellant's appeal and jurisdiction of this Hon'ble Court has already been resolved/decided by Hon'ble Peshawar High Court vide Judgment dated **06/02/2020 rendered in W.P 3563** of 2019, and till date the Respondent has **not challenged** the same before the Apex Court, which has **attained finality**, hence, on this score alone, Respondent's Department plea regarding jurisdiction and maintainability of appeal is without substance rather the same is not appealable to prudent mind.

- iv. Admittedly, the Appellant along with other similarly placed employees in connected appeals are the **Civil Servants** and their **status has been confirmed** by Hon'ble Peshawar High Court vide judgment dated 06/02/2020 which has attained finality. Hence, the Appellant being civil servant as enshrined in **Section 2 (1) (b) of Khyber Pakhtunkhwa Civil Servant Act, 1973**, has left with no other option but to approach this Hon'ble Court under **Section 4 of the KP Service Tribunal Act, 1974** against the impugned Order dated 06/10/2020.

- v. The Respondent's Department has already raised the same plea regarding maintainability, jurisdiction and applicability of Article 9(2) of Khyber Pakhtunkhwa Leaves Force Act, 2019 in their comments as well as at the time of arguments before the Hon'ble Peshawar High Court in W.P No.3563 of 2019 and the same being **past and closed chapter can't** be raised at this stage before this Hon'ble Court. Hence, the Respondent's department is estopped by their own conduct.

vi. After 25th Constitutional Amendment, the Appellant's erstwhile Department (Federal Leaves Force) was provincialized on 12th March, 2019 through promulgation of KP Leaves Force (Transition) Ordinance 2019 and vide notification/ memorandum dated 18th March, 2019, all the administrative, legal, ancillary matters, including service appeal, promotions and litigation in respect of both forces i-e Levies and Khasadar were transferred to Government of Khyber Pakhtunkhwa and ministry of SAFRON has ceased its authority over the Appellant's Erstwhile Department.

Thereafter, Khyber Pakhtunkhwa Levis Force Act 2019 was promulgated on September 16, 2019 but during time period of conversion of Ordinance to Act, (12th March 2019 to 16th September, 2019), no cut of date has been mentioned for the retirement notification of Ex-Leaves and Khasadars. Hence, the impugned order dated 6/10/2020 is based on presumption and assumption and is liable to be set aside.

Copy of notification/ memorandum dated 18th March, 2019 of Ministry of SAFRON is annexed as annexure R-1

vii. That in order to discuss the issues related to newly absorbed levies/Khasadars Forces of newly merges districts, a committee was constituted, who under chairmanship of Regional Police Officer, Malakand/ **Respondent No.3** convened meeting held on 02/06/2021 wherein in it was decided to declared **28th March, 2019** as the cut of date for retirement of Levies/Khasadars Force and the District Police Officers were directed to provide the names of those officials/ employees who are retiring after the cut of date i-e 28/3/2019.

Copy minutes of meeting dated 02/06/2021 is annexed as annexure R-2

FACTS:

1. Need no comments.
2. Need no comments
3. That Para No. 3 of the comments is wrong, against fact and personal file of the appellant, misleading, mere allegation, without substance, based on surmises and conjuncture hence denied. Moreover, the Appellant served the Department with zeal and zest upto the entire satisfaction of the high ups, that's why the Appellant had achieved Best Performance Certificate, Commendation Certificate and appreciation letters from Respondents department.

{Copies of Certificates are annexed as R/3-R/7}

4. Admitted fact need not to be proved, hence no comments
5. That Para No. 5 of comments is wrong, misleading and miss conceived, against law and facts hence denied. The detail reply is given in reply to preliminary objections
6. Reply to Para. 6 is wrong, miss leading, concocted against law and facts hence denied. The detail reply is given in reply to preliminary objections.
7. That Para No. 7 of the comments is wrong, false, misconceived, against fact and law hence, denied. The detail reply is already given in reply to preliminary objections.
8. That Para No. 8 of the comments is wrong, fabricated, misleading and misconceived hence, denied. However, it is worth to mention that the Appellant is serving the police department and getting his salary from the Police Department. The detail reply is already given in above para's
9. That Para No. 9 of the comments is self-explanatory, based on assumption and presumption, wrong, irrelevant, misconceived hence denied. In

furtherance, shoulder promotion vide office order dated 08-04-2021 by the Respondents, the Appellant is serving Police Department till date and is getting his monthly salary in lieu of his services to the Respondents/ Department like other similarly placed police officials. The detail reply is already given in above para's

{Copy of Pay Slip are annexed as R/8 }

10. That para no.10 is evasive denial, which amounts to admission; hence, the detail reply is already given in reply to preliminary objections.
11. Need no comments
12. That Para No. 12 is wrong, misleading, misconceived and fabricated, hence, denied. As mentioned above, the Appellant along with other appellant in connected appeals does not falls within cut of date i-e 28/3/2019 as per minutes of meeting held on 02/6/2021. The detail reply is already been given in reply to preliminary objections.
13. That Para. 13 of the comments is wrong, illegal, discriminatory, abuse of law and process, misuse of authority vested in authority and without cogent grounds and reason, hence, denied. Moreover, the impugned order dated 6/10/2020 is the outcome of personal grades, malafide intentions, only to harass and drag the innocent appellant into frivolous and baseless litigation and nothing else. The detail reply is already given.
14. That Para No. 14 is wrong, incorrect and misleading hence, denied. The detail reply is already given.
15. That in response to para no.15 of the comments it is stated that after 25th Constitutional Amendment, all the federal levies Force including Khasadar Force were provincialized by way of KP Levies Force (transition) Ordinance, 2019 and in pursuance thereof, the SAFRON Ministry vide notification dated 18th March, 2019, ceased its authority over the Federal

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Force by transferring all the administrative, legal, ancillary matters, including service appeal, promotions and litigation in respect of both forces i-e Levies and Khasadar to Government of Khyber. But Appellant including other appellant in connected appeals are treated in accordance with law like employees of Provincial Tribal Leaves Force in shape of notification and Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021. Hence, the impinged order dated 6/10/2021 is discriminatory and against article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

16. That Para No.16 of the comments is wrong, illegal, against fact and law, hence, denied. The detail reply is already given in above para's.

17. That para No. 17 is wrong, illegal, against fact and law, hence, denied. The detail reply is given in above para's.

GROUND:

That Para No. A to M of the grounds of comments are wrong, illegal, misleading, misconceived, based on assumption and presumption, against the admitted fact and law on the subject matter, hence, denied. The detail reply is already been given in reply to preliminary objections to the comments.

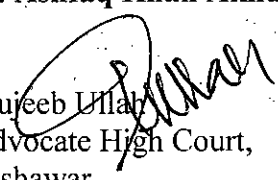
In wake of above submission, it is, therefore, most humbly prayed the appeal of the appellant may please be allowed and accepted as prayed for.



Appellant

Through


M. Ashfaq Khan Akhunkhail
&


Mujeeb Ullah
Advocate High Court,
Peshawar.

Dated: 13-12-2021

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In Service Appeal No 11924/2020

Dilawar Khan

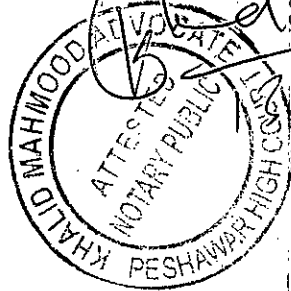
VERSUS

Govt. of Khyber Pakhtunkhwa & others

REJOINDER ON BEHALF OF APPELLANT TO
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01 TO 05

AFFIDAVIT

I, Dilawar Khan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



[Signature]
DEPONENT

11

Amex R/1

8

Government of Pakistan
Ministry of States & Frontier Regions

<<<<<

No.F.8(1)-LK/2019

Islamabad, the 18th March, 2019

MEMORANDUM

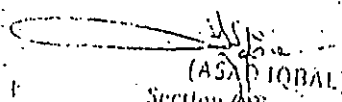
Subject: REPEAL OF FEDERAL LEVIES FORCE REGULATION, 2012 AND PROMULGATION OF KHYBER PAKHTUNKHWA LEVIES FORCE TRANSITION ORDINANCE, 2019 & KHYBER PAKHTUNKHWA KHASADAR FORCE (MAINTENANCE, REGULATION AND PROTECTION OF SERVICE) (TRANSITION) ORDINANCE 2019.

I am directed to convey that consequent to the 25th Constitutional Amendment, the Federally Administered Tribal Areas (erstwhile FATA) and Provincially Administered Tribal Areas (erstwhile PATA) stand merged in the Province of Khyber Pakhtunkhwa, and therefore, the President Islamic Republic of Pakistan or the Federation cannot make Regulations for erstwhile PATA anymore. All the functions performed by the erstwhile FATA Secretariat, its Secretaries and Directorates also stand transferred to the concerned Departments of Government of Khyber Pakhtunkhwa.

2. The Federal Levies Force, Regulation, 2012 has been repealed through Khyber Pakhtunkhwa Levies Force Transition Ordinance ORD. NO. I of 2019 on 12th March, 2019 whereby the said Force stands provincialized. Similarly the Khasadar Force working in the erstwhile Federally Administered Tribal Areas through Executive Orders and instructions, for management of said areas within the framework of territorial and collective responsibility, also stands provincialized through Khyber Pakhtunkhwa Khasadar Force (Maintenance, Regulation and Protection of Service) (Transition) Ordinance ORD. NO. II of 2019.

3. Now therefore, all the administrative, legal and ancillary matters, including service appeals, promotions and litigation in respect of both the forces i.e. Levies Force and Khasadar Force have been transferred to the Government of Khyber Pakhtunkhwa and its relevant forums from 12th March, 2019, the date of the issuance of above said Ordinances.

4. It is clarified that Ministry of States and Frontier Regions (SAFRON) has ceased to be the controlling authority in respect of Levies Force and Khasadar Force working in erstwhile FATA & PATA. All concerned Commandants and other Forums may kindly be informed accordingly.


(ASAD IQBAL)
Section Officer (L&E)

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Advocate General, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Additional Chief Secretary, Merged Areas Secretariat, Wazirabad Road, Peshawar.

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ATTESTED

Amner R/2

(9)

MINUTES OF THE MEETING REGARDING THE ISSUES RELATED TO NEWLY ABSORBED LEVIES / KHASADAR FORCE OF NEWLY MERGED DISTRICTS HELD ON 02.06.2021 AT 1200 HOURS

In order to discuss the issues related to newly absorbed Levies / Khasadar Force of Newly merged districts, the committee constituted for the purpose meeting held on 02.06.2021 at 1100 hrs in CPO Conference Room No.1, Peshawar under the Chairmanship of the Mr. Abdul Ghafoor Afridi, Regional Police Officer, Malakand, wherein the following officers participated in the meeting:

- | | |
|-------------------------------|---|
| 1. Rai Babar Saced | DIG HQrs, Khyber Pakhtunkhwa. |
| 2. Muhammad Ijaz Khan | DIG Special Branch, Khyber Pakhtunkhwa. |
| 3. Mr. Irfan Ullah Khan | AIG Establishment, CPO Peshawar. |
| 4. Mr. Quraish Khan | AIG Training, Khyber Pakhtunkhwa |
| 5. Mr. Yasir Afridi | SSP Operations, Peshawar. |
| 6. Mr. Javed Ahmed Chughtai | AIG Legal, Khyber Pakhtunkhwa. |
| 7. Mr. Shahzada Kaukab Farooq | DPO Bajaur |
| 8. Mr. Naveed Khalil | Budget Officer, CPO |
| 9. Mr. Ayaz Khan | Representative of Distt: Mohmand |
| 10. Mr. Habib Ullah | Representative of Distt: Bajaur |
| 11. Mr. Mazhar Khan Afridi | Representative of Distt: Khyber |
| 12. Mr. Syed Jalal | Representative of Distt: North Waziristan |
| 13. Mr. Umar Zaman | Representative of Distt: Orakzai |
| 14. Muhammadi Khan | Representative of Distt: Kurrum |
| 15. Mr. Ali Khawaz Khan | Representative of Distt: South Waziristan |

2. The meeting started with recitation of the Holy Quran.
3. The following TORs were discussed in detail and decisions taken accordingly:-
 - i. Pension Cases of absorbed Khasadar Force of Newly Merged districts.
 - ii. Issues of Cost Center i.e Levies, Khasadar & Police.
 - iii. Shuhada Package & Recruitment of Wards of Shuhada.
 - iv. Recruitment of already qualified candidates in district Bajaur for the post of Constable against the quota reserved for Minorities & Female.
 - v. Stoppage of Notification of Retirement through Home Department.
 - vi. Issues of Salaries of HC, ASI, SI & DSP & Utilization of Budget of NMDs.
 - vii. Promotion & Training related issues of Levies/Khasadar Force of NMDs.
 - viii. Any other issues.

S. No.	ISSUES IN NMDs	RECOMMENDATIONS	Action by	Timeline
1	Pension Cases of absorbed Khasadar Force of Newly Merged Districts	The committee has assigned the task to DPOs of NMDs to obtain/collect the data/cases of pension of absorbed Khasadar Force of Newly Merged Districts within 15 days and submit to Budget Officer for onward submission to	All DPOs of Newly Merged Districts Budget Officer AIG Estab:	within 15 days

ATTESTED

		the quarter concerned to resolve the instant issue.		
2.	Issue of Cost Centre i.e Levies, Khasadar & Police	After detailed deliberations, the Chair directed that Budget Officer, Central Police Office will take up the case with Provincial Government for one cost center instead of 03 cost centers i.e Levies, Khasadar & Police of NMDs as it would create discrepancies among the members of levies/Khasadar Force and as well as create hurdle in the process of counting, recording and irregularities. Furthermore, the three separate cost centre in the district would create audit Paras /NAB objections.	Budget Officer, CPO.	Immediately
3.	Shuhada Package & Recruitment of Wards of Shuhada	The committee recommended that AIG Welfare & AIG Establishment may expedite the cases of Shuhada's of NMDs and summary of Recruitment of Wards of Shuhada, respectively.	AIG Welfare AIG Estab:	Immediately
4.	Recruitment of already qualified candidates in district Bajaur for the post of Constable against the quota reserved for Minorities & Female.	The committee recommended that quota should be reserved for minorities & Female and no recruitment will be made against these reserved vacancies.	All DPOs of Newly Merged Districts	Immediately
5.	Stoppage of Notification of Retirement through Home Department.	The Home Department have retired the Levies/Khasadars personnel after announcement of 25 th Constitutional Amendment 2018, promulgation of Khasadar/Levies Force, Ordinances, 2019 & during the time period of conversion from Ordinance to Act, no provision of cut of date was mentioned for the retirement notification of Ex-levies/Khasadars.	All DPOs of Newly Merged Districts	Within 15 days


ATTESTED


		The committee decided that cut of date for the notification may be declared on 28.03.2019 as per the Ordinance of Levies/Khasadar was enforced and DPOs were posted in NMDs. In this regard, DPOs of newly merged district will provide the names of those levies/khasadars i.e deceased, incapacitated, Shaheed & the official who are retired after the cut of date.		
6.	Issues of Salaries of HC, ASI, SI & DSP & Utilization of Budget of NMDs.	Budget Officer CPO clarified that the fixing of salaries is the mandate of District Account Office and specialized people namely pay fixation party are deployed for subject purpose. In this regard, all DPOs of newly merged district will take up the case with their concerned District Account Offices to resolve the issues of salaries	All DPOs of Newly Merged Districts	Within 03 days
7.	Training related issues	AIG Training, Khyber Pakhtunkhwa appraised regarding the successful completion of training of absorbed levies/ Khasadar. In which the representatives of Levies/Khasadars have raised various observations that already trained basic recruits in NMDs may not be selected for the purpose of training in army training institutes. After detailed discussion, the committee recommended that the ex-levies & Khasadar personnel who are above 45 years shall be granted some relaxation in physical activities in the Basic Recruit Course.	AIG Training	Immediately
8.	Separate Desk at CPO level	The committee recommended that a separate desk for Newly Merged District at CPO level will be established along with supporting staff and one officer from each NMDs district will be posted in order to resolve the issues pertaining to NMDs. AIG Welfare is recommended as focal person for Separate desk at CPO level for NMDs.	DIG HQrs: AIG Estab: AIG Welfare	Immediately

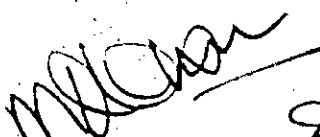
ATTESTED


9.	Promotion Related issues.	The promotion related issues were discussed deliberately, after detailed discussion, the committee unanimously approved that all the absorbed officers shall be deemed confirmed from the date of regular appointment in the respective ranks as Levies & Khasadars. Promotion of all the absorbed officers shall be made on the basis of seniority lists i.e List A, B & C which are maintained at the district level while list "D" & "E" maintained at the regional level, whereas, list "F" is maintained at CPO level as prescribed in the Police Rules, 1934.	All DPOs of Newly Merged Districts for List "A, B & C" All RPOs except Hazara Region for List "D & E" and AIG Estab: for List "F"	Within 15 days
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The meeting ended with the vote of thanks.

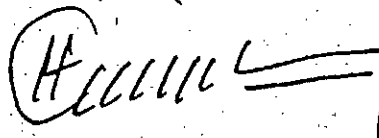

 (Muhammad Ijaz Khan) PSP
 DIG Special Branch
 Khyber Pakhtunkhwa



 (Irfan Ullah Khan) PSP
 AIG Establishment,
 Khyber Pakhtunkhwa



 (Quraish Khan) PSP
 AIG Training,
 Khyber Pakhtunkhwa


 (Javed Ahmed)
 AIG Legal,
 Khyber
 Pakhtunkhwa

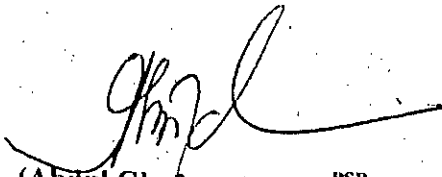

 (Naveed Khalil)
 Budget Officer,
 CPO


 (Habib Ullah)
 Representative of
 Distt: Bajaur


 (Mazhar Khan Afridi)
 Representative of
 Distt: Khyber


 (Sattar Khan)
 Representative of
 Distt: Bajaur

Chairman


 (Abdul Ghafoor Afridi) PSP
 Regional Police Officer,
 Malakand

ATTESTED

R/3 13

Bajaur at Khar

S#: 1

P. Sec:001 Month:November 2021
BJ4024 -Inspector Bajaur (Levies)
INSPECTOR BAJAUR (LEVIES)
NTN:
GPF #: IV/PA/CSS/1317
Old #:

Pers #: 00464690 -Buckle: 2451
Name: DILAWAR KHAN
SUE INSPECTOR
ENIC No.2110692739401
GPF Interest Applied
14 Active Temporary

BJ4024 -

PAYS AND ALLOWANCES:

0001-Basic Pay	31,560.00
1001-House Rent Allowance 45%	3,321.00
1210-Convey Allowance 2005	2,856.00
1300-Medical Allowance	1,500.00
1547-Ration Allowance	681.00
1646-Constabulary R Allowance	500.00
1923-UAA-OTHER 20%(1-15)	1,000.00
1933-Special Risk Allowance	4,500.00
2148-15% Adhoc Relief All-2013	633.00
Gross Pay and Allowances	74,767.00

DEDUCTIONS:

IT Payable	8,462.09	Deducted	6,045.00	TAX: (3609)	1,209.00
GPF Balance	201,793.00			Subrc:	2,620.00
3530-Police wel:Fud BS-1 to 18					631.00

Total Deductions

4,460.00
70,307.00

D.O.B 01.01.1964 LFP Quota: 4
37 Years 03 Months 026 Days HABIB BANK LIMITED KHAR, BAJAUR AGENCY.
7900883903

ATTESTED

14

Bajaur at Khar

S#: 2

P Sec:001 Month:November 2021

BJ4024 -Inspector Bajaur (Levies)

INSPECTOR BAJAUR (LEVIES)

NTN:

GPF #: IV/PA/CSS/1317

Old #:

Pers #: 00464690 Buckle: 2451

Name: DILAWAR KHAN

SUB INSPECTOR

CNIC No.2110692739401

GPF Interest Applied

14 Active Temporary

BJ4024 -

PAYS AND ALLOWANCES:

2168-Fixed Daily Allowance	4,900.00
2199-Adhoc Relief Allow @10%	423.00
2211-Adhoc Relief All 2016 10%	2,249.00
2224-Adhoc Relief All 2017 10%	3,156.00
2247-Adhoc Relief All 2018 10%	3,156.00
2264-Adhoc Relief All 2019 10%	3,156.00
2309-Adhoc Relief All 2021 10%	3,156.00
2314-Risk Allow Police - 2021	8,020.00

Gross Pay and Allowances

74,767.00

DEDUCTIONS:

IT Payable	8,462.09	Deducted	6,045.00
GPF Balance	201,793.00		

Subrc:

Total Deductions

4,460.00

70,307.00

D.O.B

01.01.1964

37 Years 03 Months 026 Days

LFP Quota:

HABIB BANK LIMITED KHAR, BAJAUR AGENCY.
7900883903

ATTESTED