BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR

Execution Application No.905 of 2023

In SA No.~~1407~~ 458 / 2023

Dilawar Shah s/o Masood R/o Selay Patay Tehsil Batkhela District Malakand (Sepoy No.5480)

.....Appellant

--------Versus--------

1. **Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat at Peshawar.**
2. **Secretary Home & Tribal Affairs Department KPK Peshawar.**
3. **Deputy Commissioner/Commandant Malakand Levies, Malakand.**

.....Respondents

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order sheet not uploaded.

Deponent

Muhammad Hussain (Superintendent)
Office of DC/Commandant Malakand Levies
CNIC:-15402-5773871-9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR

Execution Application No.905 of 2023

In SA No.48 / 2023

Dilawar Shah s/o Nian Talab Shah R/o Gul-e-Nargas Piran Tehsil Batkhela District Malakand

.....Appellant

--------Versus--------

1. **Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat at Peshawar.**
2. **Secretary Home &Tribal Affairs Department Khyber Pakhtunkhwa Peshawar.**
3. **Deputy Commissioner/Commandant Malakand Levies, Malakand.**

.....Respondents

APPLICATION FOR IMPLEMENTATION OF ORDER DATED 24-08-2023

Khyber Pakhtunkhwa, Service Tribunal
Diary No. 12696
Dated 10-05-2024

PARA WISE COMMENTS OF RESPONDENT NO. 03:

PRELIMINARY OBJECTION:-

1. The appellant has got no cause of action or locus standi to submit the instant appeal.
2. The appellant is not maintainable in its present form.
3. The appellant has not come with clean hands to this Honorable Court.
4. Due to non-joinder/mis-joinder of necessary party their appeal is liable to be dismissed.
5. The appeal is barred by time and law.

Respectfully Sheweth:

Facts:-

1. It is correct. The appeal of the appellant was disposed of by Honorable Service Tribunal Peshawar vide order dated: 24-08-2023.

2. It is incorrect. As per Amended Levy Rules para-No.11, proper forum/authority for filing application regarding service rules is Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar (Copy of Levy Rules 2013 is enclosed as **annexure-A**) while the applicant had filed application before the DC/Commandant Malakand Levies which was sent to Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar through Commissioner Malakand Davison at Saidu Sharif Swat vide this office letter No.6860/LC dated 01-09-2023 **(annexure-B)**.

3. It is incorrect. This office has sought guidance/legal advice regarding implementation of the judgment passed in service appeal No.1916/2023 dated: 24-08-2023 vide letter No.7018/LC dated: 08-09-2023 from Home Department Peshawar(Copy enclosed as **annexure-C**).

   In response to this letter, a meeting was held in Home & TA's Department, Khyber Pakhtunkhwa, Peshawar on 26-09-2023 under the chairmanship of Special Secretary-I, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar and minutes were recorded and circulated (enclosed as **annexure-D)**, wherein the following decisions are made:-

   a. To examine the cases of all those Levies Personnel retired under the PATA Federal Levies Force Service (Amended) Rules 2013 as amended on 22-03-2021 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 PATA Federal

Service Rules, 2013 as amended on 21-10-2021 and retire them under the said amended rules.

b. The Deputy Commissioners concerned to carefully prepare and send cases 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"

Subsequently, a scrutiny committee was notified vide this office order No.8093/LC dated 13-10-2023 (Copy enclosed as **annexure-E**) to examine complete details pertaining to age and service length of each individual/Levy Personnel and the proposed date of retirement as per rules. In this regard, a meeting of the scrutiny committee was held under the chairmanship of AC/Deputy Commandant (Operation) Malakand Levies on **13-10-2023**. The details regarding service and proposed retirement of conditionally 72-reinstated Levies personnel of different ranks in compliance with the directions mentioned at para (a) above of Home & TA's Department, Khyber Pakhtunkhwa, Peshawar were worked out as per record duly signed by all members of scrutiny committee (Copy enclosed as **annexure-F**).

However, no further action was taken as status quo granted by the Honourable Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat in CM No.1081-M/2023 in Writ Petition No.1283-M/2022 (Copy of order sheet dated:11-10-2023 enclosed as **annexure-G**).

4. It is incorrect. The Honorable Peshawar High Court, Peshawar dismissed all the Writ Petitions including COCs and the petitioners were directed to seek legal remedy from the Honorable Service Tribunal rather reinstated the petitioners into service (Copy enclosed as **annexure-H**). The operating part of the judgment is reproduced as follow:

   "The status of petitioners has been declared as that of Civil Servant 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 baring provision of Article 212 of the Constitution and as such Instant petitions are dismissed being not maintainable. However, the petitioner may approach the worthy Service Tribunal for the redressal of their grievances if so advised"

5. It is incorrect. This office conditionally reinstated the 72- retired Levy Personnel into service in light of Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat Judgment passed in Writ Petition No.1283 of 2022 subject to the final outcome of the CPLA pending before the apex Court vide this office order No.2586/LC dated 20-03-2023 (Copy enclosed as **annexure-I**). It is pertinent to mention here that this office has filed CPLA against the said Judgment before the August Supreme Court of Pakistan vide CPLA No.46-P/2023 which is under adjudication.

6. As explained at Para No.3 above

7. No Comments.

Pray:-

In view of above, it is humbly prayed that the appeal of the appellant may kindly be dismissed being devoid of merit on ground realities.

Mr. Shahid Khan
DC/Commandant Malakand Levies
Respondent No.03

DC/Commandant
Malakand Levies Malakand

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR

Execution Application No.905 of 2023

In SA No.48 / 2023

Dilawar Shah s/o Nian Talab Shah R/o Gul-e-Nargas Piran Tehsil Batkhela District Malakand

.....Appellant

--------Versus--------

1. **Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat at Peshawar.**
2. **Secretary Home Tribal Affairs Department KPK Peshawar.**
3. **Deputy Commissioner/Commandant Malakand Levies, Malakand.**

.....Respondents

AFFIDAVIT

I, Mr. Shahid Khan, DC/Commandant Malakand Levies, do hereby solemnly affirm and declare on oath that the contents of the accompanying Reply on behalf of the Respondent No.3 and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court please. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off/ lost.

Deponent

Deputy Commissioner/
Commandant
Malakand Levies Malakand

Muhammad Hussain (Superintendent)
Office of DC/Commandant Malakand Levies
CNIC:-15402-5773871-9

Muhammad HUSSAIN
Advocate
Oath Commissione

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR

Execution Application No.905 of 2023

In SA No.1407 / 2023

Dilawar Shah s/o Masood R/o Selay Patay Tehsil Batkhela District Malakand (Sepoy No.5480)

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--------Versus--------

1. **Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat at Peshawar.**
2. **Secretary Home Tribal Affairs Department KPK Peshawar.**
3. **Deputy Commissioner/Commandant Malakand Levies, Malakand.**

.....Respondents

AUTHORITY:

Mr. Muhammad Hussain Khan, Superintendent Malakand Levies, DC/Commandant Office Malakand Levies is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal, Peshawar and submit Comments/reply regarding subject case on behalf of the undersigned as Respondent No.3.

Deputy Commissioner
Commandant
Malakand Levies Malakand

EXTRAORDINARY

GOVERNMENT

REGISTERED NO. P.III

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 15TH FEBRUARY, 2013.

15 annexure-(1)

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

NOTIFICATION

Peshawar the 4th February 2013

SERVICE RULES FOR FEDERAL LEVIES FORCE IN PATA

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 make the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called Provincially Administered Tribal Areas (PATA) Federal Levies Force Service (Amended) Rules, 2013.

(2) They shall come into force at once.

2. Definitions.-(1) In these Rules, unless the context otherwise require, the following expressions shall have the meaning hereby respectively assigned to them, namely:-

(a) "Appointing Authority" means the appointing authority specified in rule-4;

(b) "Commandant" means Commandant of the Force, who shall be the Deputy Commissioner in their respective jurisdiction;

(c) "Deputy Commandant (Operation)" means an Assistant Commissioner or any officer of the District designated as such by the provincial government who shall be Deputy Commandant (Operation) of the Force in PATA, to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed; and who shall be responsible to the Commandant for operational matters of the Force in PATA.

(d) "Deputy Commandant (Administration)" means Deputy Commandant (Administration) of the Force, who shall be an officer of the provincial government or any officer of the District designated as such by the provincial government to exercise in his respective jurisdiction such powers and perform such functions as may be prescribed and who shall be responsible to the Commandant for administration and establishment matters of the Force in PATA.

(e) "Government" means the Government of Khyber Pakhtunkhwa;

(f) "Home Department" means Provincial Home & Tribal Affairs Department;

(g) "Initial recruitment" means appointment made other than by promotion or by transfer;

(h) "Schedule" means the Schedule appended to these rules;

Attested

(i) "Selection or Promotion Committee" means a Committee for recruitment or as the case may be, promotion of Force personnel as notified by the Government;

(j) "Service" means the levies service;

(2) The expression used but not defined herein shall have the same meanings as are assigned to them under the PATA Levies Force Regulation 2012.

3. **Composition and eligibility of the Force.-** (1) The Force shall comprise of the posts specified in Schedule-I and such other posts as may be determined by the Government from time to time.

(2) Recruitment to the Force shall be made in accordance with the requirement specified in Schedule-I. No person shall be appointed unless he fulfills the following conditions:-

(a) The candidate shall be a citizen of Pakistan and bonafide resident of the respective district of Khyber Pakhtunkhwa.

(b) The candidate shall be, in good mental and bodily health and free from physical defect, which likely to interfere in the efficient discharge of his duties.

(c) Medical Superintendent of the respective district headquarter hospital shall issue a certificate of medical fitness to the candidate.

(d) Recruitment to all ranks of the Force shall be made from amongst those persons having a minimum height of 5'-7" and chest measurement of 34"-35 ½ " with an age of not less than eighteen years and not more than twenty-five years on the last date of submission of application;

(e) No person (except those who are already in Government Service) shall be appointed to the Force unless he produces a certificate of character from the Principal of Academic Institution last attended or a certificate of character from two gazetted officers from respective districts, not being his relative and who are well acquainted with his character; and

(f) No person who is married to foreign national shall be eligible for appointment in the Force, unless allowed by the Government, in writing.

4. **Appointing Authority.-** (1) Commandant shall be the appointing authority for initial recruitment and promotion up to the rank of Subedar. Whereas promotion to the rank of Subedar Major and above, the authority shall rests with the provincial government.

(2) Appointment to the post shall be made in accordance with the provisions contained in Schedule-I read with Rule-3 of these rules.

(3) Appointment either through initial recruitment or by promotion shall be made through duly constituted Selection/promotion Committees.

Provided that in case of raising of force in a new district, the Commandant shall have the authority to recruit ex-servicemen above the rank of sepoy on contract basis for a period of one year extendable for a further period of one year but not exceeding three years in total, with prior approval of the government.

It is further provided that the ex-servicemen so appointed on contract shall not be more than forty five years of age.

5. **Probation.-** Persons appointed to posts by initial recruitment, promotion or transfer shall remain on probation for a period of one year extendable by a further period of one year. If no order is issued on the expiry of the first year of probation period, the period of probation shall be deemed to have been extended for further one year. If no order is issued on the completion of extended period, the probation shall be deemed to have been terminated.

Attested

Training. - (1) All newly recruited personnel of the Force shall undergo six months pre-service training before being assigned duties of the rank for which they selected. Initially, the Appointing Authority shall arrange for appropriate training till a proper Levies Training Center is established.

(2) The pre-service training mentioned in sub-rule (1) may contain training on basic laws, investigation techniques, mob control, basic intelligence, arrest and detention procedure, jail duties, drill, weapons training, field craft, bomb disposal, counter assault, traffic control, raids, watch & ward etc. Proper training syllabus and modules shall be developed through mutual consultation with local law enforcing agencies by the Home Department.

7. Resignation.-No member of the Force shall resign before the expiry of the first three months of his recruitment or he shall deposit an amount equal to his three months pay in lieu of his three months essential service.

8. Seniority and promotion.- (1) Promotion shall be strictly on seniority cum fitness basis as well as on the required length of service as specified in Schedule-I.

(2) The service of a personnel by initial recruitment, promotion or transfer may be dispensed with or reverted if, in the opinion of the competent authority his work and conduct is not satisfactory during probation period or due to abolishment of posts, as the case may be.

Provided that in case of dispensing with their service or reversion the concerned authority shall record cogent reasons for such action in writing.

(3) The seniority list of the Force shall be maintained at district level. Commandant shall be responsible for maintaining the seniority list of the force and shall notify annually.

9. Transfer during service. - Every member of the service shall be liable to serve anywhere within PATA with the prior approval of the Commissioner Malakand Division.

10. Punishment. -After satisfying himself regarding punishable acts (as referred in Schedule-II) through a charge duly framed in writing, necessary punishments specified in Schedule-IV may be awarded by the respective authority.

Provided that punishment so awarded shall be duly incorporated in service rolls / service dossier accordingly.

11. Appeal. - If any personnel of the force is aggrieved by any order issued under these rules, within thirty days of communication to him of such order, may prefer an appeal to the competent authority.

Provided that no appeal shall lie against the punishments specified at S.No. (1) and (2) of Schedule-IV.

12. Awards and commendations. -(1) Force personnel may be given special award and commendation certificate for devotion to duty, demonstration of gallantry and such achievement in the performance of duty, in the manners as prescribed by the Commandant, and shall be made part of the service rolls / service dossier.

(2). Force personnel, if embraces martyrdom in the discharge of his duty, will be given proper Guard of Honour at the time of burial.

13. Service Record. -Proper service rolls / service dossiers of all Force Personnel shall be maintained in Levy Office of each district. Annual reports of all Havaldars and Junior Commissioned Officers (JCOs) will also be maintained for the purpose of promotion.

14. Uniform.-The levy personal shall attire black shalwar qamees with brown chappli, white socks, black barrette cap and black belt whereas the JCOs will wear brown belt during duty hours.

15. Leave.- (1) Leave may be granted depending on the exigencies and at the discretion of the Commandant. All leave of ten days or above, will be considered as long leave and shall be granted on the recommendations of Subedar Major by the Commandant.

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(2) Casual leave may be allowed upto three days by Subedar Major. Casual leave up to nine days may be granted by the Deputy Commandant (to be notified by the Commandant) on the recommendation of the concerned JCO.

(3) Medical leave shall be granted by the Commandant on the production of medical certificate from the medical superintendent concerned.

16. **Salary.**-The Force personnel shall be entitled to receive pay and allowances as per their pay scales notified by the Federal Government from time to time.

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

18. **Conduct.**-The conduct of Force personnel shall be regulated by these rules or instructions issued by Government from time to time.

19. **Gratuity and pension.**-All Force personnel will be entitled to pension as per prevailing Federal 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 Federal 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 services due to such fatality, he shall be entitled to gratuity and pension as per Federal Government Rules.

(3) 5% quota shall be reserved for sons and wards of martyred in initial recruitment of Force personnel.

Provided that in case of permanently incapacitated personnel of the force during the course of duty, preference shall be given to the sons and wards of such incapacitated Force Personnel in general recruitment.

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

22. **Health care.**-Medical facilities for the Force personnel and their families shall be catered for at Government hospitals and dispensaries at par with other employees of the Federal Government.

23. **Monitoring and evaluation.**- (1) Commandant or Deputy Commandant of the Force shall set up suitable number of levy posts in their respective jurisdiction and shall assign suitable number of Force personnel at each of such levy post. In case of establishment of Levies Station within their jurisdiction shall require prior approval of the government.

(2) There shall be levy line in each district, which shall have all necessary facilities including parade ground, barracks, quarter guards, koth/armoury etc.

(3) Duty Register showing the duties assigned to each individual on day-to-day basis shall be maintained in each levy post /Levy Station/Levy Lines by a levy Muharir.

(4) Naib Subedar shall be responsible for carrying out the work assigned to Force personnel whose duties shall be entered in advance in the duty register.

(5) Registers including *roznamchas* as prescribed by the Commandant shall be maintained in every levy post/Station/Lines.

(6) Commandant, Deputy Commandant or any other officer of the District Administration shall in the course of their tours in their jurisdiction, may inspect duty register and *roznamchas of Levy posts/stations* and satisfy themselves that Force Personnel are carrying out their assigned duties. A note regarding absence from the post or from the place of duty of any Force personnel without leave, shall invariably be recorded by inspecting officers in the duty register. Such entry shall be communicated to the Commandant and Deputy Commandant (Operations) by incharge of the post/station within twenty four hours for appropriate action.

Attested

9

24. An Anomaly Committee duly constituted/notified vide Home and Tribal Affairs Department, Khyber Pakhtunkhwa Notification No.SO(Police)/HD/12-19/2012 dated 11th December, 2012 shall consider and remove such anomalies from time to time referred to the competent authority.

25. Repeal.-Any rules, orders or instructions enforce in respect of the PATA Levies Force, immediately before the commencement of these rules shall stand repealed in so far as these rules, orders or instructions are inconsistent with the rules.

Secretary
Home & Tribal Affairs Department
Government of Khyber Pakhtunkhwa

Attested
Supdt

SCHEDULE – I
See rules 4(2) and 8

A. Uniformed Force

This Portion Revised. vide Page: 10

S.#	Post/Rank	Eligibility for promotion	Promotion Quota	Direct Quota	Qualification
1.	Subedar Major (BS-16)	03 years service as Subedar	100%		
2.	Subedar (BS-13)	03years services as NaibSubedar	100%		
3.	NaibSubedar (BS-11)	03 years service as Havaldar	100%		
4.	Havaldar (BS-8)	03 years service as Naik	100%		
5.	Naik (BS-7)	03 years service as Lance Naik	100%		
6.	L/Naik (BS-6)	03 years service as Sepoy	100%		
7.	Sepoy (BS-5)			100%	Middle pass preferably Matric
8.	Head Armourer BPS-05	05 years service as Assistant Armourer	100%		
9.	Assistant Armourer BPS-01			100%	Certificate of Armourer

B. Ministerial staff

10.	Assistant (BS-14)	KPO/ Computer Operator/ Senior clerk/Junior Clerk (i) Minimum 5 years service as KPO/ Computer Operator; (ii) 5 years service as Senior Clerk; (iii) 7 years service as Junior Clerk	50%	50%	B.A. or equivalent for direct recruitment and by promotion seniority-cum-fitness from amongst KPO/Computer Operator/Senior clerk/Junior Clerk on the basis of their date of entry into service.
11.	KPO / Computer Operator BPS-12			100%	Intermediate with one year diploma in IT from a recognized institute
12.	Senior Clerk (BS-9)	5 years service as Junior Clerk	100%		
13.	Junior Clerk (BS-7)		10% from lower staff with Matric	90%	Matric with a typing speed of 30 words per minutes / preferably computer literate
14.	Behishti (BS-5)			100%	Literate
15.	Driver (BS-4)			100%	Driving License /Driving Experience
16.	Pesh Imam BPS-02			100%	MoulviFazil
17.	Tracker (BS-2)	5 years service in BS-1	10%	90%	Primary Pass
18.	NaibQasid BPS-01			100%	Literate
19.	Sweeper (BS-1)			100%	Literate

Attested
Supdt

SCHEDUEL – II
(seeRule 10)

Grounds of penalty

The concerned authority may impose one or more penalties, where a personnel of the Force, in the opinion of the authority: -

a. is inefficient or has ceased to be efficient;

b. is guilty of misconduct, like unauthorized absence from leave, breach of order, disobedience, unruly behavior, passing on official secrets to unauthorized persons, etc;

c. is corrupt, or may reasonably be considered corrupt;

d. is guilty of any violation of duty;

e. losses, misplaces or causes harm to a weapon through negligence or lack of maintenance;

f. is insubordinate to his superiors;

g. is convicted of a criminal offence;

h. is guilty of cowardice, or abandons any piquet, fortress, post or guard which is committed to his charge or which is his duty to defend;

i. is engaged in propagation of sectarian, parochial, anti-state views and controversies;

j. is engaged or is reasonably suspected of being engaged to excite, cause or conspire to cause or joins in any mutiny, or being present at any mutiny and does not use his utmost endeavor to suppress it;

k. attempts collective bargaining, conspiring or attempting to call off duty or take procession to press for the demands; or

l. is guilty of omission and commission under the law and rules.

m. deserts the service.

n. Being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or

o. Without authority, leaves his commanding officer, or his post or party, to go in search of plunder; or

p. Quits his guard, picquet, party or patrol without being regularly relieved or without leave; or

q. Uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or without authority breaks into any house or any other place for plunder, or plunders, destroys, or damages any property of any kind; or

r. Internally causes or spreads a false alarm or rumour during action or in post, camp, lines, or quarters.

12 Annexer "B"

REGISTERED

OFFICE OF THE DC MALAKAND/
COMMANDANT MALAKAND LEVIES

NO. 6860 /LC
DATED MALAKAND THE 01/9 /2023
Phone: 0932-452080 Fax: 0932-450557

To,

The Commissioner,
Malakand Division at Saidu Sharif,
Swat.

Subject:- **REQUEST FOR CONVENING MEETING**

R/Sir,

Reference to verbal communication in presence of Deputy Commissioners Dir Upper and Dir Lower with your good self dated 28-08-2023, it is submitted for the information of worthy Commissioner, Malakand Division that 73-Levy Personnel along with others of different ranks of Malakand Levies were retired from service in light of Amended Levy Rules received from Home & TA's Department, Khyber Pakhtunkhwa, Peshawar with effect from 22-03-2021.

Aggrieved from the above, the retired Levy Personnel of different categories approach Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat and filed Writ Petition No.1263-M/2022 filed Muhammad Salim and others followed by COC No.102-M/2022 and the Honorable Court vide Judgment dated 23-11-2022 reinstated the above mentioned Levy Personnel in light of Section-11 of Act 2021.

In light of above COC, this office conditionally reinstated the above mentioned Levy Personnel subject to the final decision of the pending CPLA filed before the August Supreme Court of Pakistan against the Judgment of Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat by this office and also proposed 73-super numerary posts to Home & TA's Department, Khyber Pakhtunkhwa, Peshawar department as there were few posts available with this office to accommodate the said Levy Personnel vide this office letter No.4260/LC dated 23-05-2023. The Home & TA's Department, Khyber Pakhtunkhwa, Peshawar sought legal advice from Advocate General, Khyber Pakhtunkhwa Peshawar regarding the above issue. The legal advice of the Advocate General Khyber Pakhtunkhwa Peshawar communicated to this office through Law, Parliamentary and Human Right Department, Peshawar and subsequently Home & TA's Department, Khyber

Attested

13

Pakhtunkhwa, Peshawar letter No.SO(Police-II)/HD/11-13/M.L/2023 dated 25-08-2023 (Copy enclosed).

The conditionally reinstated Levy Personnel among others have also approach the Honorable Khyber Pakhtunkhwa, Service Tribunal Peshawar vide appeal No.1935 of 2022 tiled Umar Rehman and others and the Honorable Service Tribunal passed Judgment dated 24-08-2023 (Copy enclosed).

In view of above, it is therefore requested that Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar may kindly be approached for convening a meeting to be attended by high ups of Law Department, Finance Department and Establishment Department as well Deputy Commissioner, Dir Upper and Dir Lower feasibly after 11-09-2023, please.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

No. 6861-62 /LC

Copy forwarded to the:-

1. Deputy Commissioner/Commandant Dir Upper Levies.
2. Deputy Commissioner/Commandant Dir Lower Levies.

For information, please

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

Attested

14 Annexure C

REGISTERED

OFFICE OF THE DC MALAKAND/
COMMANDANT MALAKAND LEVIES
NO. 7018 /LC
DATED MALAKAND THE 28/19 /2023
Phone:0932-452080 Fax:0932-452105

To,

The Special Secretary,
Home & TA's Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject:- IMPLEMENTATION OF THE JUDGMENT PASSED BY THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR IN SERVICE APPEAL NO. 1215/2021 TITLED MUHAMMAD SALIM AND OTHERS V/S GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY AND OTHERS.

R/Sir,

Reference to the subject cited and the enclosed copy of the judgment passed by the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar in the subject service appeal.

It is submitted that the appellants in the subject service appeal belonging to district Malakand are approaching this office for implementation of the judgment passed by the Honorable Service Tribunal Peshawar on 24-08-2023 in the aforementioned service appeal by re-instating them and assigning them duties. This office is seeking guidance regarding the status of the Provincially Administrative Tribal Areas Levies Force (Amendment) Act, 2021 and amendments made in the PATA Federal Levies Force Service Rules, 2013 vide Notification No. SO(Police-II)HD/1-3/FEDERAL_LEVIES 20221 dated: 22-03-2021 and Notification No. SO(Police-II)/HD/1-3/2020/MKD/LEVIES dated: 21-10-2021 (Copies enclosed as Annexure-A, B & C for ready reference) or any other rules which the force can be governed. Furthermore, this office may be guided/advised regarding the rules applicable after the subject judgment, please.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 7019-22 /LC

Copy forwarded to the:

1. Commissioner Malakand Division Saidu Sharif Swat.
2. Deputy Secretary (L&K) Home & TA's Department, Peshawar
3. Section Officer (L&K) Home & TA's Department, Peshawar.
4. Section Officer (Litigation-II) Home & TA's Department Peshawar.

For information Please.

DC MALAKAND/COMMANDANT
MALAKAND LEVIES MALAKAND

Attested

Annex "D" (15)

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

No. SO(L&K/HD/Malakand/227-
Dated Peshawar the 05-10.20

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 TRIBUNA DATED 24.8.2023 IN SERVICE APPEAL NO.162/2023 TITLE MUHAMMAD JAMAL AND OTHERS VS GOVT

Dear Sir,

In connation of this office letter No. even dated 18.09.2023 on the subjec noted above, I am directed to enclose herewith minutes of the meeting held on 26.9.2023 i 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-I, Home & TAs Department
3. PA to Additional Secretary (Police/L&K), Home & TAs Department

Section Officer (L & K)

Attested

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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 this 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(POUCE-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: 17-08-2023 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:

Attested
Supdt

Para 05 of the Honourable High Court Judgment,

"there is no dispute amongst the parties that the present petitioners have got retired on 25-03-2021 as by then those petitioners who were sepoy have attained the age of 42 years and those petitioners who were Lance Naik, Naik, and Havaldar have completed three years of service as Lance Naik, Naik and Havaldar, therefore, by operation of the Federal Levies Services (Amended) rules, 2013 RW notification 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 regula 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

Attested

18

...al, 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.

Attested

19 Annexure E

NO. 8093/LC
DATED MALAKAND THE 13/10/2023
Phone: 0932-452080 Fax: 0932-450557

OFFICE ORDER

In pursuance of order sheet dated 11-10-2023 of the Honorable Peshawar High Court Dar-ul-Qaza Swat in C.M 1081-M/2023 in Writ Petition No.1283-M/2022 titled Muhammad Salim & Others and minutes of the meeting held under the chairmanship of Special Secretary Home & Tribal Affairs Department Peshawar circulated vide letter bearing No.SO(L&K)/HD/Malakand/227-40 dated 05-10-2023, the following scrutiny committee is hereby notified for reinstatement/retirement of Levies personnel as per Rules within 02-days positively as next date of hearing is fixed on 18-01-2023.

1. AC/Deputy Commandant Malakand Levies (Ops) Batkhela.....In chair
2. Superintendent Malakand Levies.
3. Subedar Major Malakand Levies.
4. Incharge Establishment Branch Malakand Levies.

Terms of References (TORs): -

1. To examine the cases of all those Levies Personnel retired under the PATA Federal Levies Force Service (Amended) Rules, 2013 as amended on 22-03-2021 in light of Schedule-III of the PATA Levies Force (Amended) Act, 2021 effective from 30-11-2021.
2. To propose reinstatement of Levy Personnel in compliance with both orders of Hon'ble Courts after checking their eligibility under the Amended Act-2021.
3. To propose the cases of those already reinstated Levies personnel into service in compliance with Court order may be examined under the PATA Federal Service Rules, 2013 as amended on 21-10-2021 and also propose their retirement under the said amended rules.
4. To carefully prepare/propose case for creation of supernumerary posts for reinstatement and adjustment of the Levies retired under the previous rules in compliance with Court orders, if no vacant posts exists for their reinstatement.

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 8094-8100/LC

Copy forwarded to: -

1. The Additional Chief Secretary, Government of Khyber Pakhtunkhwa, Home & TA, s Department Peshawar.
2. The Commissioner Malakand Division, at Saidu Sharif Swat.
3. The Section Officer (L&K), Home &TA,s Department Peshawar for information with reference to his letter referred to above.
4. AC/Deputy Commandant Malakand Levies (Ops) Batkhela.
5. Superintendent Malakand Levies.
6. Subedar Major Malakand Levies.
7. Incharge Establishment Branch Malakand Levies.

For information and necessary action, please.

DC/COMMANDANT
MALAKAND LEVIES MALAKAND

Attested
Supdt

Age/Service Length of 72-Conditinally reinstated Levies personnel of Malakand Levies as per amended Levies Service Rules 21-10-2021(schedule-iii)

Havildar BPS-09

NO	Petition Wise S.No	Reg: No.	Name of Levies personnel	Date of Appointment	Date of Birth	1st promotion (L/NAIK)	2nd promotion (NAIK)	Last promotion (HAVILDAR)	Formula (30-11-2021 Minus DOA/DOB)	Thier Position as per Critieria Laid Down in Rules on 21-10-2021						Status as per Notification of 21-10-2021
										Age Limit 51-Years			Service Length 31-Years			
										Years	Months	Days	Years	Months	Days	
1	-	4222	Muhammad Zeb	21/07/1991	21/07/1964	04/03/2009	18/01/2010	16/02/2013	30/11/2021	57	4	9	30	4	9	Completed the requisite age i.e. 51-Years
2	71	4237	Nawab Sher	15/12/1991	15/12/1966	07/12/2009	18/01/2010	06/02/2015	30/11/2021	54	11	15	29	11	15	Completed the requisite age i.e. 51-Years
3	57	4239	Muhammad Sadiq	24/12/1991	24/12/1969	14/07/2009	02/01/2010	19/04/2016	30/11/2021	51	11	6	29	11	6	Completed the requisite age i.e. 51-Years
4	52	4251	Shah Muhammad	08/04/1992	08/04/1965	12/01/2009	11/10/2010	19/10/2017	30/11/2021	53	7	22	29	7	22	Completed the requisite age i.e. 51-Years
5	5	4253	Hussain Dayar	06/06/1992	06/06/1970	15/01/2010	21/06/2011	19/10/2017	30/11/2021	51	5	24	29	5	24	Completed the requisite age i.e. 51-Years
6	4	4262	Omer Rehman	23/07/1992	23/07/1963	18/01/2010	02/10/2012	19/10/2017	30/11/2021	53	4	7	29	4	7	Completed the requisite age i.e. 51-Years
7	3	4293	Zafar Shah	11/06/1992	11/03/1967	18/01/2010	06/11/2012	13/07/2018	30/11/2021	54	3	19	29	3	19	Completed the requisite age i.e. 51-Years
8	50	4300	Rehmat Ullah	25/10/1992	25/10/1970	18/01/2010	09/04/2012	13/07/2018	30/11/2021	51	1	5	29	1	5	Completed the requisite age i.e. 51-Years
9	69	4302	Ihsan-ul-Haq	26/10/1992	26/10/1970	18/01/2010	20/09/2012	13/07/2018	30/11/2021	51	1	4	29	1	4	Completed the requisite age i.e. 51-Years
10	42	4304	Noor Raziq	01/11/1992	01/11/1967	18/01/2010	16/02/2013	13/07/2018	30/11/2021	54	0	29	29	0	29	Completed the requisite age i.e. 51-Years
11	23	4314	Sher Dad	15/11/1992	15/11/1969	18/01/2010	25/04/2015	20/09/2019	30/11/2021	52	0	15	29	0	15	Completed the requisite age i.e. 51-Years
12	6	4319	Shah Kasum	17/12/1992	17/12/1969	18/01/2010	19/04/2016	26/02/2020	30/11/2021	52	11	13	28	11	13	Completed the requisite age i.e. 51-Years
13	72	4320	Mond Razaq	20/12/1992	20/12/1970	18/01/2010	19/04/2016	26/04/2020	30/11/2021	50	11	10	28	11	10	Completed the requisite age on 19-12-202
14	2	4324	Noor Haq	20/01/1993	20/01/1969	18/01/2010	05/03/2016	25/06/2020	30/11/2021	52	10	10	28	10	10	Completed the requisite age i.e. 51-Years

Naik BPS-08

NO	Petition Wise S.No	Reg: No.	Name of Levies personnel	Date of Appointment	Date of Birth	1st promotion (L/NAIK)	Last promotion (Naik)	-	Formula (30-11-2021 Minus DOA/DOB)	Thier Position as per Critieria Laid Down in Rules on 21-10-2021						Status as per Notification of 21-10-2021
										Age Limit 49-Years			Service Length 29-Years			
										Years	Months	Days	Years	Months	Days	
15	8	4325	Sabz Ali	21/01/1993	21/01/1972	15/01/2012	13/07/2018	-	30/11/2021	49	10	9	28	10	9	Completed the requisite age i.e. 49-Years
16	65	4331	Gul Rehman	11/02/1993	11/02/1971	18/01/2010	19/10/2017	-	30/11/2021	50	9	19	28	9	19	Completed the requisite age i.e. 49-Years
17	7	4336	Amir Nawaz	13/03/1993	13/03/1971	18/01/2010	19/10/2017	-	30/11/2021	50	8	17	28	8	17	Completed the requisite age i.e. 49-Years
18	67	4342	Omera Jan	01/05/1993	01/05/1969	18/01/2010	19/10/2017	-	30/11/2021	52	6	29	28	6	29	Completed the requisite age i.e. 49-Years
19	61	4343	Sad Ahmed	01/05/1993	01/05/1970	18/01/2010	19/10/2017	-	30/11/2021	51	6	29	28	6	29	Completed the requisite age i.e. 49-Years
20	51	4353	Sarzar Khan	04/11/1993	04/11/1971	18/05/2010	19/10/2017	-	30/11/2021	50	0	26	28	0	26	Completed the requisite age i.e. 49-Years
21	26	4370	Aziz Gul	11/04/1994	11/04/1971	21/05/2011	13/07/2018	-	30/11/2021	50	7	19	27	7	19	Completed the requisite age i.e. 49-Years
22	36	4374	Sarzar Ali	22/08/1994	22/08/1969	07/12/2011	13/07/2018	-	30/11/2021	52	3	8	27	3	8	Completed the requisite age i.e. 49-Years
23	1	4377	Muhammad Salim	18/02/1995	18/02/1968	21/07/2011	13/07/2018	-	30/11/2021	53	9	12	26	9	12	Completed the requisite age i.e. 49-Years
24	48	4378	Rahim Gul	20/02/1995	20/02/1972	09/01/2011	13/07/2018	-	30/11/2021	49	9	10	26	9	10	Completed the requisite age i.e. 49-Years
25	70	4382	Sami Ullah	12/03/1995	12/03/1972	13/11/2011	13/07/2018	-	30/11/2021	49	8	18	26	8	18	Completed the requisite age i.e. 49-Years
26	15	4351	Murad Khan	04/07/1995	04/07/1970	04/12/2012	20/09/2019	-	30/11/2021	51	4	26	24	4	26	Completed the requisite age i.e. 49-Years
27	43	4360	Sad Jamal	02/07/1995	02/07/1970	22/03/2012	20/09/2019	-	30/11/2021	51	4	28	24	4	28	Completed the requisite age i.e. 49-Years

	33	4394	Muhammad Raze	19-07-1995	19/07/1971	06/01/2012	26/02/2020		30/11/2021	50	4	11	26	4	11	Completed the requisite age i.e. 49-Yea

L/Naik BPS-08

Petition Wise S.No	Reg: No.	Name of Levies personnel	Date of Appointment	Date of Birth	Promotion (L/NAIK)	-	-	Formula (30-11-2021 Minus DOA/DOB)	Thier Position as per Critieria Laid Down in Rules on 21-10-2021						Status as per Notification of 21-10-2
									Age Limit 47-Years			Service Length 27-Years			
									Years	Months	Days	Years	Months	Days	
25	27	4400	Wasi ullah	04/09/1995	04/09/1970	08/12/2012	-	-	30/11/2021	51	2	26	26	2	26	Completed the requisite age i.e. 47-Yea
30	28	4406	Waaz Ullah	24/09/1995	24/09/1970	22/09/2012	-	-	30/11/2021	51	2	6	26	2	6	Completed the requisite age i.e. 47-Yea
31	29	4407	Rahman Zaman	16/10/1995	16/10/1971	16/02/2013	-	-	30/11/2021	50	1	14	26	1	14	Completed the requisite age i.e. 47-Yea
32	9	4413	Sanwar Shah	21/09/1996	21/09/1966	16/02/2013	-	-	30/11/2021	55	2	9	26	2	9	Completed the requisite age i.e. 47-Yea
33	13	4414	Faizal Mehmood	26/11/1995	26/11/1974	16/02/2013	-	-	30/11/2021	47	0	4	26	0	4	Completed the requisite age i.e. 47-Yea
34	11	4420	Bahid Zaman	07/02/1996	07/02/1972	06/02/2015	-	-	30/11/2021	49	9	23	25	9	23	Completed the requisite age i.e. 47-Yea
35	12	4423	Iqbal Hussain	05/03/1996	05/03/1974	19/04/2016	-	-	30/11/2021	47	8	25	25	8	25	Completed the requisite age i.e. 47-Yea
36	47	4427	Umer Ghani	05/04/1996	05/04/1973	05/10/2016	-	-	30/11/2021	48	7	22	25	7	22	Completed the requisite age i.e. 47-Yea
37	37	4449	Habib-ur-Rahman	01/02/1997	01/02/1974	19/10/2017	-	-	30/11/2021	47	9	29	24	9	29	Completed the requisite age i.e. 47-Yea
38	65	4452	Aziz Ur Rehman	01/02/1997	01/02/1974	19/10/2017	-	-	30/11/2021	47	9	29	24	9	29	Completed the requisite age i.e. 47-Yea
39	35	4457	Noor Zaib	16/02/1997	16/02/1974	19/10/2017	-	-	30/11/2021	47	9	14	24	9	14	Completed the requisite age i.e. 47-Yea
40	54	4471	Iqbal Hussain	27/03/1997	27/03/1974	19/10/2017	-	-	30/11/2021	47	8	3	24	8	3	Completed the requisite age i.e. 47-Yea
41	60	4477	Mohd Ismail	14/02/1998	14/02/1974	13/07/2018	-		30/11/2021	47	9	16	23	9	16	Completed the requisite age i.e. 47-Yea
42	50	4485	Ghulam Rasool	15/05/1998	03/02/1973	13/07/2018	-	-	30/11/2021	48	9	27	23	6	15	Completed the requisite age i.e. 47-Yea
43	10	4492	Khalid Usman	03/07/1998	02/08/1972	13/07/2018	-	-	30/11/2021	49	3	22	23	4	27	Completed the requisite age i.e. 47-Yea
44	46	4493	Basit Ahmad	21/07/1998	01/01/1972	13/07/2018	-	-	30/11/2021	49	10	29	23	4	9	Completed the requisite age i.e. 47-Yea
45	28	4495	Mohd Nabbi	23/07/1998	07/01/1973	13/07/2018	-	-	30/11/2021	48	10	23	23	4	7	Completed the requisite age i.e. 47-Yea
46	44	4496	Asad Khan	21/07/1998	01/01/1964	25/01/2019	-	-	30/11/2021	57	10	29	23	4	9	Completed the requisite age i.e. 47-Yea
47	39	4498	Umer Gul	21/07/1998	01/01/1963	25/01/2019	-	-	30/11/2021	58	10	29	23	4	9	Completed the requisite age i.e. 47-Yea
48	42	4499	Mohd Sadiq	23/07/1998	23/07/1973	25/01/2019	-	-	30/11/2021	48	4	2	23	4	2	Completed the requisite age i.e. 47-Yea
49	24	4503	Fazal Halim	04/08/1998	01/01/1972	04/03/2019	-	-	30/11/2021	49	10	29	23	3	26	Completed the requisite age i.e. 47-Yea
50	14	4510	Muhammad Zahir	03/08/1998	13/03/1974	28/04/2020	-	-	30/11/2021	47	8	17	23	3	22	Completed the requisite age i.e. 47-Yea

Sepoy BPS-08

Petition Wise S.No	Reg: No.	Name of Levies personnel	Date of Appointment	Date of Birth	-	-	-	Formula (30-11-2021 Minus DOA/DOB)	Thier Position as per Critieria Laid Down in Rules on 21-10-2021						Status as per Notification of 21-10-2
									Age Limit 45-Years			Service Length 25-Years			
									Years	Months	Days	Years	Months	Days	
41	4517	Said Alam	15/03/1998	14/02/1978	-	-	-	30/11/2021	45	9	16	23	3	15	Completed the requisite age i.e. 45-Yea
16	4518	Sardar Ali	15/08/1998	19/08/1975	-	-	-	30/11/2021	46	3	11	23	3	15	Completed the requisite age i.e. 45-Yea
55	4529	Haq Rahman	12/03/1999	18/03/1974	-	-	-	30/11/2021	47	8	11	22	8	18	Completed the requisite age i.e. 45-Yea
31	4531	Waheed Shah	12/03/1999	02/02/1975	-	-	-	30/11/2021	46	9	28	22	8	17	Completed the requisite age i.e. 45-Yea

1	34	4532	Sardar Ghani	12/03/1999	01/03/1975	-	-	-	30/11/2021	46	8	29	22	8	18	Completed the requisite age i.e. 45-Yea
1	33	4533	Amjad Ali	12/03/1999	20/02/1976	-	-	-	30/11/2021	45	9	19	22	8	18	Completed the requisite age i.e. 45-Yea
1	19	4559	Latif Khan	01/03/1999	01/01/1976	-	-	-	30/11/2021	45	10	23	22	5	23	Completed the requisite age i.e. 45-Yea
1	62	4584	Mohd Imran	09/02/2003	03/01/1975	-	-	-	30/11/2021	46	10	28	21	8	21	Completed the requisite age i.e. 45-Yea
1	38	4590	Lal Faraz	09/02/2000	01/01/1976	-	-	-	30/11/2021	45	10	29	21	8	21	Completed the requisite age i.e. 45-Yea
1	22	4595	Bashir Mohd	25/02/2000	02/05/1974	-	-	-	30/11/2021	47	6	28	21	8	1	Completed the requisite age i.e. 45-Yea
1	56	4602	Sajid Hussain	01/03/2000	20/04/1975	-	-	-	30/11/2021	46	7	19	21	8	29	Completed the requisite age i.e. 45-Yea
1	17	4610	Mohd Mukhtar	24/05/2003	20/02/1973	-	-	-	30/11/2021	48	5	10	21	8	6	Completed the requisite age i.e. 45-Yea
1	20	4613	Imdad Khan	11/08/2000	03/03/1975	-	-	-	30/11/2021	46	8	27	21	3	19	Retired from Service w.e.f 14-03-2022.
1	32	4926	Khayal Badshah	01/11/2006	15/03/1977	-	-	-	30/11/2021	44	8	16	15	9	29	Completed the requisite age i.e. 45-Yea
1	63	4996	Muhammad Shahab	27/07/2005	08/04/1975	-	-	-	30/11/2021	46	7	22	16	4	3	Completed the requisite age i.e. 45-Yea
1	58	5057	Bakht Naeem	09/05/2007	02/02/1976	-	-	-	30/11/2021	45	3	28	14	6	21	Retired from Service w.e.f 05-10-2022
1	45	5258	Saeed Ullah Khan	05/10/2009	08/10/1977	-	-	-	30/11/2021	44	1	24	13	1	24	Retired from Service w.e.f 30-06-2022
1	21	5395	Sawar Khan	23/02/2009	01/07/1977	-	-	-	30/11/2021	44	4	29	12	8	7	Completed the requisite age i.e. 45-Ye
1	40	5434	Ishfaq Alam	10/05/2009	09/02/1975	-	-	-	30/11/2021	46	9	23	12	5	14	Retired from Service w.e.f 31-01-2022
0	68	5897	Fazal Mahmood	24/05/2010	01/02/1977		-	-	30/11/2021	44	9	29	11	6	8	Retired from Service w.e.f 13-04-2022
1	64	5926	Muhammad Farooq	30/05/2010	14/04/1977	-	-	-	30/11/2021	44	7	16	11	5	0	Completed the requisite age i.e. 45-Ye
2	18	5302	Muhammad Zeb	01/03/1998	10/03/1972	-	-	-	30/11/2021	49	8	20	23	8	29	

1 scrutiny committee members reached to the conclusion after thoroughly examing record of the Levies Personnel that each individual Levy Personnel has completed/crossed the upper age limit as per amended Le vies Rules 21-10-2021. Hence, non of the above have left age to reinstate them into service under the said rules, therefore committee recommended that levies personnel may be reinstated with effect from 23-3-2 w commencement of PATA Levies Force (amended) Act,2021 with full financial benefits and to be retired under the amended Levies Rules 21-10-2021.

Superintendent
Malakand Levies

Subedar Major
Malakand Levies

Incharge Establishment
Malakand Levies

(CHAIRMAN SCRUTNY COMMITTEE)
AC/DEPUTY COMMANDANT MALAKAND LEVIES

Attested
Superintendent

Attested
Superintendent

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23 Amyer G.

PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of .....

Case No. ..... of .....

Serial No. of order or proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	11.10.2023	**C.M 1081-M/2023 in W.P 1383-M/2022** **Present:** Barrister Dr. Adnan Khan, Advocate for petitioners. Khwaja Salah Uddin, Additional A.G for the official respondent. *** Learned A.A.G, while making a reference to the minutes of the meeting and decision thereon dated 05.10.2023, submitted at the bar that in consonance with the decision so made, the authority is going to examine the case of each individual who are 26 in number from District Dir Lower, 72 from District Malakand and 2 from District Dir Upper, however, the instant matter, which is the outcome of a decision in Writ Petition No. 1216-M/2021 decided on 10th November 2022, therefore, the learned A.A.G is directed to come up along with complete details pertaining to the age of each individual and the proposed date of retirement as per rules. Adjourned to 18.10.2023. Till then, respondents are directed not to issue an adverse order against all the petitioners of the instant petition and other

Mudassir Ahmad (PS) HONOURABLE MR. JUSTICE MUHAMMAD NAEEM ANWAR
HON'BLE MR. JUSTICE MIAN GUL HASSAN AURANGZEB

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		identical petitions as well. To come up along with ***C.O.C 9-M/2023 In W.P 1216-M/2022.*** ***JUDGE*** ***JUDGE***

Office
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25 Annexure H

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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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 Administrated 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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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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(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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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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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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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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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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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 procedures;
(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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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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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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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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(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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(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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Speaker

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 Bhai 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 from 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, those functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the

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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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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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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 be 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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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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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 5 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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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 Mubeen-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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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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vs. RO-177 Ex-DSR Muhammad Nazir (1998 SCMR 1081) and *Commandant, Frontier Constabulary, Khyber Pakhtunkhwa, Peshawar and others vs. Gul Raqib 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 Raqib 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 i 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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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 according 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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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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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 Sectrary V. MANZOOR AHMAD and others.*

ATTESTED
EXAMINER

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

JUDGE

JUDGE

JUDGE

Announced,
Dt.29/11/2022.

HON'BLE MR JUSTICE LAL JAN KHATTAK,
HON'BLE MR JUSTICE S M ATTIQUE SHAH &
HON'BLE MR JUSTICE SYED ARSHAD ALI

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