


FORM OF ORDER SHEET

Court of _____

Appeal No. 969/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/07/2024	<p>The appeal of Mr. Noor Akbar resubmitted today by Mr. Sher Hyder Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 15.07.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

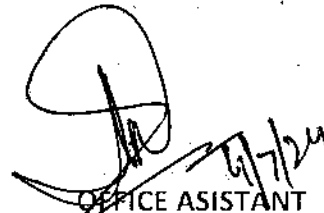
The appeal of Mr. Noor Akbar received today i.e on 03.07.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent no. 1 & 3 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondent.

② Address of appellant is incomplete be completed according to the rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.

No. 292 /Inst./2024/KPST,

Dt. 4/7 /2024.


OFFICE ASISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Sher Hyder Khan Adv.
High Court Peshawar.

Respectfully Sir,
Aft demand of all office objection
the instant service appeal is hereby
re-submitted please.



BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNEL, PESHAWAR

Service Appeal No 969 of 2024

Noor Akbar

V E R S U S

Government of Khyber Pakhtunkhwa ^{Addl.} Chief Secretary KPK,
Home and TAs Deptt; & Other.

APPLICATION FOR FIXATION OF THE INSTANT SERVICE
APPEAL IN PRINCIPLE SEAT/PESHAWAR OF THIS
HONORABLE TRIBUNAL FOR PRELIMINARY HEARING.

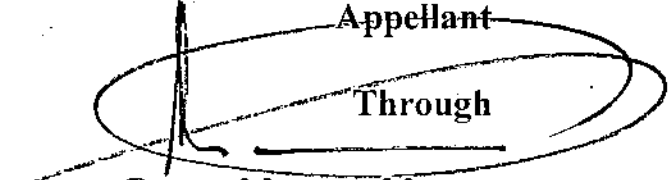
Respectfully Sheweth;

1. That the above titled service appeal is pending for adjudication before this Honorable Tribunal at Peshawar; where no date of hearing is fixed.
2. That the applicant and counsel for the applicant also residing/practicing at Peshawar.
3. That there is no legal bar on acceptance of the instant application for the better administration of justice.

It is therefore; humbly request that on acceptance of the instant service appeal may very kindly be fixed for hearing before the principal seat at Peshawar for preliminary hearing.


Appellant

Through


SHER HYDER KHAN
ADVOCATE HIGH COURT
LL.B (Hons), LL.M (I-L)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNEL, PESHAWAR

Service Appeal No 969 of 2024

Noor Akbar.

VERSUS

Government of Khyber Pakhtunkhwa (Addl. Chief Secretary KPK
Home and TAs Deptt. & Other.)

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Appellant

Through,

SHER HYDER KHAN
ADVOCATE HIGH COURT
LL.B (Hons), LL.M (I-L)

The Magister & Associates
103, Said Anwar Plaza,
Dabgari Gardens Peshawar Cantt
Ph: 091-2214005 Cell: 0336-9377022

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNEL, PESHAWAR

Service Appeal No 969 of 2024

**Noor Akbar S/O Gul Akbar (Lance Naik) R/O Village Arandu Khas Post Office Arandu Tehsil Drosh & District Chitral Lower.
.....APPELLANT**

VERSUS

- 1. Additional Chief Secretary, Home & Tribal Affairs Government of Khyber Pakhtunkhwa at Civil Secretariat Peshawar.**
- 2. Deputy Commissioner / Commandant Chitral Levies at DC Office District Chitral (Lower).
.....Respondents**

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, TO THE EFFECT THAT THE IMPUGNED OFFICE ORDER/NOTIFICATION DATED; 12-02-2024 AND SUBSEQUENT ALL ORDERS/NOTIFICATIONS ISSUED BY THE DEPUTY COMMISSIONER CHITRAL LOWER; BE SET ASIDE BEING ILLEGAL, VOID AB INITIO AND WITHOUT ANY JUSTIFICATION AND THE APPELLANT BE RE-INSTATED IN SERVICE WITH ALL BACK BENEFITS. ANY OTHER RELIEF DEEMS JUST AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO GRANTED TO THE APPELLANT.

RESPECTFULLY SHEWETH;

Brief facts and grounds giving rise to the instant appeal are as under;

- 1. That the appellant has been serving as regular member of Chitral Levies Force having considerable length of services for 29 years at his credit.**

- 2.** That the appellant in performing his duties with great zeal, zest, devotion and dedication at his level best to the entire satisfaction of his superior's tenure of service in the subject post was exemplary and outstanding with effect to improve the entire system of maintenance, administration and discipline. Furthermore, his excellent service at Chitral Levies has been highly appreciated by high ups of the department with effect to assure task given by high ups in security, essential relief to flood and earth quick effectees of the district in 2015 disaster.
- 3.** That the appellant was initially terminated from service vide order Dated; 11-02-2022, against which the appellant preferred departmental appeal before the Worthy Additional Chief Secretary, Govt. of Khyber-Pakhtunkhwa, Home & Tribal Affairs Department, which has been accepted vide order Dated; 14-11-2023. Copy of dismissal order & Representation & Re-instatement into are as ANNEXURE "A", "B" & "C".
- 4.** That the Appellant in compliance to the order Dated; 14-11-2023, joined duties, but to the dismay of the appellant the Worthy Deputy Commissioner issued his retirement order vide impugned order Dated; 12-02-2024, which is liable to be struck down. Copy of compulsory retirement from service is as ANNEXURE "D".
- 5.** That the appellant being aggrieved of the acts of the respondent No. 2 preferred departmental appeal/representation before the Worthy Additional Chief Secretary, Govt. of Khyber-Pakhtunkhwa, Home & Tribal Affairs Department on dated; 07-03-2024, which is still not been answered and pending before the Respondent No. 1 and the appellant approach this Honorable Tribunal for redressal of his grievances, hence; the instant service appeal inter alia, on the following grounds. Copy of Representation dated; 07-03-2024 ANNEXURE "E".

G R O U N D S:

- A.** That the appellant has not been treated as according to law because when an employee, i.e. civil servant, whose wrongful dismissal or removal has been set-aside goes back to his service as if he were never dismissed or removed from service. The restitution of an employee, in this context, means that there has been no discontinuance in his service and for all purposes he had never left his post. He is therefore entitled to arrears of pay/services for the period he was kept out of service for no fault of his own. No different is the position where an employee has been served with a penalty like reduction in rank or withholding of increment (s) or forfeiture of service, etc. and the penalty has been set-aside. The employee stands restored to his post will be entitled to arrears of pay and service as would have accrued to him had the penalty not been imposed on him. This general principle of restitution fully meets the constitutional requirements of fair trial and due process (Article 4 & 10A) besides the right to life (Article 9) which includes the right to livelihood ensuring all lawful economic benefits that come with the post. Reinstating an employee but not allowing him to enjoy the same terms and conditions of service as his colleagues is also discriminatory. Back benefits may include other than the pecuniary benefits, like the right to seniority or the right to promotion, etc. All this snowballs into offending the right to dignity of an employee for being treated as a lesser employee inspite of being reinstated or restored into service.
- B.** That the "concept of reinstatement into service with original seniority and back benefits" is based on the established principle of jurisprudence that "if an illegal action/wrong is struck down by the Court, as a consequence, it is also to be ensured that no undue harm is caused to any individual due to such illegality/wrong or as a result of delay in the redress of his grievance.
- C.** That a civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to

- D.** That the appellant has been retired from service without any legal justification, as the rules under which the appellant has been retired has been struck down by the Honorable Tribunal.
- E.** That admittedly there is no case exist, established or connect the appellant with any offence, miss conduct or negligence with effect to liable him for any departmental proceeding or penalty neither the ground of allegation is punishable, therefore to proceed and imposition of major penalty of retirement is void ab initio, illegal, unlawful and ineffective upon the terms and conditions of service of the appellant.
- F.** That the impugned order is backed by illegal and irregular exercise of power and based on mis-application of law/rules on the subject as well as against the well settled norms of administration of justice, hence; highly illegal, arbitrary, cursory, whimsical and full of surmises and conjectures. . .
- G.** That the impugned order to impose penalty is totally based on evasive and self-made grounds. In fact, the Deputy Commissioner has failed to proceed on the substantial reasons and exhibited lack of application of administrative mind. The impugned order is, therefore, liable to be struck down.
- H.** That the appellant has rendered about 29 years exemplary and outstanding service to the Department and is qualified committed and entitle to continue his remaining service till superannuation with all pending and upcoming promotions.
- I.** That the appellant has been retired prematurely irrespective of the fact that the appellant is entitled for promotion to the next higher grade as sufficient number of posts are still laying vacant.
- J.** That the impugned notifications of amending relevant rules and retirement of the appellant thereunder is illegal and unconstitutional hence the same is liable to be declared as such.

- K. That it is a settled proposition of law that rules cannot be amended to the detriment of civil servant /employee, even, otherwise the same will have prospective effect and cannot be applied retrospectively.
- L. That the revised schedule 3 of the impugned amended rules is self-contradictory and discriminatory as well. The said schedule prescribed 60 years of age and certain maximum length of service for higher rank official's i.e Subedar Major, Subedar and Naib Subedar, while in case of lower rank officials like the appellant have been treated with discrimination by not extending full benefits of the rules *ibid*.
- M. That any other ground be furnished whenever required for the assistance of your good authority in support of his appeal.

It is therefore, humbly prayed that, on acceptance of the instant appeal the impugned office order/notification dated; 12-02-2024 and subsequent all orders/ notifications issued by the deputy commissioner chitral lower; be set aside being illegal, void ab initio and without any justification and the appellant be re-instated in service with all back benefits. Any other relief deems just and proper in the circumstances of the case may also granted to the appellant.

Dated; 01-07-2024



Through,

Appellant

SHER HYDER KHAN
 ADVOCATE HIGH COURT
 LL.B (Hons), LL.M (I-L)

The Magister & Associates
 103, Said Anwar Plaza,
 Dabgari Gardens Peshawar Cantt
 Ph: 091-2214005 Cell: 0336-9377022

(6)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNEL, PESHAWAR

Service Appeal No _____ of 2024

Noor Akbar

VERSUS

Government of Khyber Pakhtunkhwa ~~Government of Khyber Pakhtunkhwa~~ Chief Secretary KPK
& Others

AFFIDAVIT

I, Noor Akbar S/O Gul Akbar (Lance Naik) R/O Village Arandu Khas Post Office Arandu Tehsil Drosh & District Chitral Lower; appellant do hereby solemnly affirm and declare on Oath that all the contents of the subject appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Deponent

CNIC: 5201-0581793-1

Cell No: 0346-9755485

Identified by;

SHER HYDER KHAN
ADVOCATE HIGH COURT
LL.B (Hons), LL.M (I-L)

The Magister & Associates
103, Said Anwar Plaza,
Dabgari Gardens Peshawar Cantt
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7

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNEL, PESHAWAR**

Service Appeal No _____ of 2024

Noor Akbar

V E R S U S

**Government of Khyber Pakhtunkhwa through Additional Chief
Secretary Home & Tribal Affairs Department KPK & Others**

ADDRESSES OF PARTIES

APPELLANT

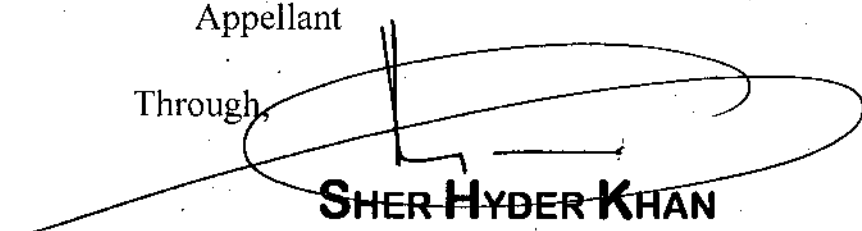
Noor Akbar S/O Gul Akbar (Lance Naik) R/O Village Arandu Khas
Post Office Arandu Tehsil Drosh & District Chitral Lower

RESPONDENTS

1. Additional Chief Secretary Home & Tribal Affairs Government of
Khyber Pakhtunkhwa at Civil Secretariat Peshawar
2. Deputy Commissioner / Commandant Chitral Levies at DC Office
District Chitral (Lower).

Appellant

Through,


SHER HYDER KHAN
ADVOCATE HIGH COURT
LL.B (Hons), LL.M (I-L)

The Magister & Associates
103, Said Anwar Plaza,
Dabgari Gardens Peshawar Cantt
Ph: 091-2214005 Cell: 0336-9377022



THE DEPUTY COMMISSIONER, LOWER CHITRAL
COMMANDANT CHITRAL LEVIES

Tel: (0943) 412055, Fax: (0943) 432423, FB: - Twitter: - Instagram: @DCLowerChitral
No. 505-14 /DCC/CLC-28 Dated Chitral the 11th February, 2022

ORDER:

LNK NOOR AKBAR was posted as Post Commander Arandu Post, and as per Report of AAC Drosh vide No 1253/AAC (D) /1-A/2020/Vol-I dated 30.05.2020 that on 19.05.2020 while patrolling apprehended smugglers with narcotics consisting of 8 kgs Opium and 1 kg hashish lot of Indian medicines etc, and took into possession the attached case property from the smugglers

WHEREAS, this office on receipt of telephonic report of the summoned LNK Noor Akbar on 29.05.2020, after elapse of ten days of the incident, and he has denied the happening of such incident and told the commandant that it is a conspiracy against him

AND WHEREAS, the allegations leveled against him for smuggling the subordinate official by using his authority and misused his powers to conceal the facts for personal gains. This act of LNK Noor Akbar is tantamount of committing serious misconduct in official duty and to be proceeded under the PATA Levies Service (Amended) Rule 2013.

NOW, THEREFORE, on receipt of report from concerned quarter regarding his involvement in concealing of facts and act of abet in narcotics smuggling, the competent authority has suspended him from service vide No. 4107/SPC-28 dated 30.05.2020 and Assistant Commissioner Lower Chitral has been appointed as Inquiry Officer vide No. 4315-1h/UPC-29 dated 30.05.2020 to probe into the matter and to conduct inquiry under the PATA Levies Service (Amended) Rule 2013. Findings of the inquiry, was submitted to the Commandant vide No. 25/ACC dated 26.07.2020. The recommendations were not agreed upon and the same were re-opened and forwarded to AC/ Dy Commandant Levies vide 323/DCC/CLC-28 dated 27.12.2021.

WHEREAS, in view of prevailing circumstances, it is expedient and necessary in the interest of the force, and to provide for measures, inter-alia, relating to dismissal, removal, etc., of certain persons from government service, As the case of LNK Noor Akbar, reveals that the official is guilty of misconduct and concealing the facts from high ups and as per Force report the case property was recovered from his house

AND, WHEREAS, the Inquiry Officer has recommended major penalty removal from service and the inquiry report was communicated to this office vide letter No. 835/ACC/inquiry dated 12.01.2022, which is evident and proved guilty of misconduct and involvement / concealing facts of smuggling incident dated 19.05.2020, THEREFORE, the suspended official (LNK Noor Akbar) is liable to be dealt under Rule-10(9) of Schedule-IV of the PATA Levies Force Service (Amended) Rule 2013.

NOW, the undersigned is satisfied with the recommendations of the Inquiry Officer, that LNK NOOR AKBAR (EPN: 00316722) is found guilty of misconduct under 10(9) of Schedule-IV of the PATA Levy Force (Amended) Rule 2013, THEREFORE, I, MUHAMMAD ANWAR UL HAQ, DEPUTY COMMISSIONER/COMMANDANT CHITRAL LEVIES LOWER CHITRAL being Competent Authority and in exercise of the powers conferred upon me in the said Rule impose major penalty and dismiss LNK NOOR AKBAR from service with immediate effect.

DEPUTY COMMISSIONER
COMMANDANT

DISTRIBUTION FOR INFORMATION & NECESSARY ACTION:

1. The Secretary to Govt of Khyber Pakhtunkhwa Home & TAs Deptt. Peshawar
2. The Commissioner Malakand Division Swat
3. The Additional Deputy Commissioner, Lower Chitral
4. The District Accounts Officer, Chitral
5. The Assistant Commissioner / Dy Commandant Levies Lower Chitral with reference to above, please
6. The Accountant Chitral Levies
7. The Incharge Levies HQ Chitral
8. Official Concerned
9. Office record / Notice Board HQ

Better copy

**THE DEPUTY COMMISSIONER, LOWER CHITRAL
COMMANDANT CHITRAL LEVIES**

8/A

LNK NOOR AKBAR was posted as Post Commander Arandu Post, and as per Report of AAC Drosh vide No. 1253/AAC (D) /1-A/2020/Vol-1 dated 30.05.2020 that on 19.05.2020 while patrolling apprehended smugglers with narcotics consisting of 8 kgs Opium and 1 kg hashish lot of Indian medicines etc., and took into possession the attached case property from the smugglers.

WHEREAS, this office on receipt of telephonic report of the summoned LNK Noor Akbar on 29.05.2020, after elapse of ten days of the incident, and he has denied the happening of such incident and told the commandant that it is a conspiracy against him.

AND WHEREAS, the allegations levelled against him for snubbing the subordinate official by using his authority and misused his powers to conceal the facts for personal gains. This act of LNK Noor Akbar is tantamount of committing serious misconduct in official duty and to be proceeded under the PATA Levies Service (Amended) Rule 2013

NOW, THEREFORE, on receipt of report from concerned quarter regarding his involvement in concealing of facts and act of alibi in narcotics smuggling, the competent authority has suspended him from service vide No. 4107/8PC-28 dated 30.05.2020 and Assistant Commissioner Lower Chitral has been appointed as Inquiry Officer vide No. 4115-18/BPC-28 dated 30.05.2020 to probe into the matter and to conduct inquiry under the PATA Levies Service (Amended) Rule 2013: Findings of the inquiry, was submitted to the Commandant vide No. 25/ACC dated 06.07.2020. The recommendations were not agreed upon and the same were re-opened and forwarded to AC/Dy Commandant Levies vide 323/DCC/CLC-28 dated 27.12.2021.

WHEREAS, in view of prevailing circumstances, it is expedient and necessary in the interest of the force, and to provide for measures, inter-olla, relating to dismissal, removal, etc., of certain persons from government service, As the case of LNK Noor Akbar, reveals that the official is guilty of misconduct and concealing the facts from high ups and as per Police report the case property was recovered from his house

AND, WHEREAS, the Inquiry Officer has recommended major penalty removal from service and the inquiry report was communicated to this office vide letter-No. 835/ACC/Inquires dated 12.01.2022, which is evident and proved guilty of misconduct and involvement/concealing facts of smuggling incident dated 19.05.2020, THEREFORE the suspended official (LNK Noor Akbar) is liable to be dealt under Rule-10(9) of Schedule-IV of the PATA Levies Force Service (Amended) Rule 2013.

NOW, the undersigned is satisfied with the recommendations of the Inquiry Officer, that LNK NOOR AKBAR (EPN: 00318722) is found guilty of misconduct under 20(9) of Schedule-IV of the PATA Levy Force (Amended) Rule 2013, THEREFORE, I, MUHAMMAD ANWAR UL HAQ, DEPUTY COMMISSIONER/COMMANDANT CHITRAL LEVIES LOWER CHITRAL being Competent Authority and in exercise of the powers conferred upon me in the ibid Rule impose major penalty and dismiss LNK NOOR AKBAR from service with immediate effect

**DEPUTY COMMISSIONER
COMMANDANT**

DISTRIBUTION FOR INFORMATION & NECESSARY ACTION:

1. The Secretary to Govt of Khyber Pakhtunkhwa Home & TAs Deptt; Peshawar
2. The Commissioner Malakand Division Swat
3. The Additional Deputy Commissioner
4. The District Accounts Officer Chitral
5. The Assistant Commissioner / Dy Commandant Levies Lower Chitral with reference to above, please
6. The Accountant Chitral Levies
7. The Incharge Levies HQ Chitral
8. Official Concerned
9. Office record/Notice Board HQ

خدمت جناب سیکرٹری ہوم اینڈ ٹریڈ انجیل آفیسر ذریعہ ہارٹسٹ گورنمنٹ آف خیبر پختونخواہ

عنوان درخواست برآمداری اڈا کی مسلسل اول بر طرف آفس آرڈر اینڈ کنٹریول کمنشنریل ہوم اور 2022-2021 کے بارے میں طرف کیے جانے والے ملازمت سے۔
جناب عالی

(1) یہ کہ مسائل جنرل ایجوکیشن 28 سالوں سے خدمات سر انجام دیا آیا ہوں اور جو کہ گمراہی کے علاوہ زمین کی طرح نیا قانون 2021-2022 کی وجہ سے مدت ملازمت میں تین سال ہر ماہ کی وجہ سے جبری ریٹائرڈ کر دیا گیا ہے۔ ریٹائرمنٹ آرڈر درخواست چاہے ساتھ لک ہے۔
11-6-2021

(2) یہ کہ مسائل 11-6-2021 کی آرڈر اور اپنا پتہ بھالی کیلئے عدالت عالیہ پشاور ہائی کورٹ میں WP#2913/21 دائر کی ہے۔ اور مقدمہ چل رہا ہے۔ عدالت نے فیصلہ جاری کیا ہے۔ اس کے تحت عدالت نے درخواست چاہے ساتھ لک ہے۔
W.P کی کاپی اسٹیک کی کاپی درخواست چاہے ساتھ لک ہے۔
Rule Amendment 22-3-2021 خلاف بنیادی حق کی ۱۲

(3) یہ کہ سرکاری اسٹیبلشمنٹ اور دیگر سیاسی ٹائمہ میں کی کوششوں سے مگر چل 22-3-2021 کو Rule میں حکومتیم کر کے ریٹائرمنٹ کی مدت 20 سالوں سے جس کی رو سے مسائل اپنے ملازمت میں دوبارہ بحال ہونے کیلئے لٹ ہے۔ کاپی Rule Amendment
۳۰-۱۱-۲۰۲۱ ہے۔

(4) یہ کہ جب نیا Amendment Rule 30-11-2021 آیا تو مسائل نے مگر چل اپنی کمنشنریل اور کونڈرخواست دی کہ مسائل کو تمام ملازمت کے قانون کے مطابق بحال کیا جائے تو اپنی کمنشنریل نے ایک غیر قانونی اجنس (رضی ایک ٹیس کو بنیاد بنا کر مجھے عمل طور پر نوکری سے برخواست کیا گیا جو کہ پہلے سے ہی فیصلہ شدہ ہے اور اس بنیاد پر مجھے مزاحمت کے طور پر ایک سال کی انگریزمنٹ کالی گئی ہے۔ اور نوکری پر بحال کیا گیا ہے۔

چند مدت کا کی جاتی ہے کہ مندرجہ بالا قانون اور سلاں کو بنیاد بنا کر میری برطرفی آرڈر ہوم اور 11-2-2022 منسوخ کی جائے اور مجھے میرے حق پر بحال کرنے کا حکم صادر کرنا کہ منظور فرمائیں۔ بندہ تاحیات دعا گو رہے گا۔
21.2.22

نوٹ: (لاٹس ٹیک چرٹل ایجوکیشن چرٹل)
3454-21-2-2022
نور اکبر (لاٹس ٹیک چرٹل ایجوکیشن چرٹل)
21-2-2022

50CP-11
for MIA please
21/2/2022



10

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

Dated Peshawar, the 8th November 2023

ORDER

No. SO(L&K)/HD/Lower Chitral/

WHEREAS, on 21.02.2022, Ex-Officer Niaz Noor Akbar of Central Levy Force submitted an appeal for reinstatement into service with the request to set aside the order issued by the Deputy Commissioner/Commandant Lower Chitral Levy Force dated 11.02.2022.

AND WHEREAS, the appellant Noor Akbar was accused of smuggling and the DC/Commandant framed a charge sheet and statement of allegations against the appellant on 30.5.2020.

AND WHEREAS, the Assistant Commissioner/Deputy Commandant being Inquiry Officer recommended in his report dated 06.07.2020 to impose penalty of withholding one year increment and transfer of the accused to somewhere else. However, no final order was passed by the Deputy Commissioner in light of the inquiry report.

AND WHEREAS, the appellant was retired from service w.e.f 7.5.2021 with full pension benefits on 11.6.2021 when he was under Inquiry.

AND WHEREAS, on 6.12.2021, the appellant was reinstated in service in wake of Section-11 of the PATA Levies Force (Amendment) Act 2021.

AND WHEREAS, on 12.1.2022, a second Inquiry was initiated against the appellant on the same charge and statement of allegations. However, neither any statement of allegations /charge sheet nor any show cause notice served upon the appellant provided by the Deputy Commissioner office to this Department.

AND WHEREAS, consequent upon the report of 2nd Inquiry, the appellant was removed from service by the Deputy Commissioner/Commandant, on 12.01.2022.

(11)

AND WHEREAS, Under Schedule-IV read with Rule 10 of PATA Levies Force Service (Amended) Rules under 2013, the competent authority for imposing penalty upon Naik and Lance Naik is Assistant Commissioner/Deputy Commandant while contrary to the rules ibid, he (AC HQrs) was appointed as Inquiry Officer and the penalty was imposed by the Deputy Commissioner/Commandant Levies.

AND WHEREAS, as described above, requirement of rules have not been observed in dismissing him from service.

NOW, THEREFORE, I, Muhammad Abid Majeed, Additional Chief Secretary, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, being Appellant Authority in terms of Rule-11 of PATA Federal Levies Force Service (Amended) Rules 2013, after going through the available record on file, statements of the appellant and representative of Deputy Commissioner Lower Chitral, hereby accept the appeal of the appellant set aside the order No. 505-14/DCC/CLC-28 dated: 11-02-2022 and hereby reinstate him into service and his absence period may be treated as leave without pay. Furthermore, he may be proceeded afresh under the rules by the Competent Authority, if necessary, observing all codal formalities.

- Sed

**Additional Chief Secretary
Home & Tribal Affairs Department**

Copy forwarded to the:

1. PS to Additional Chief Secretary, Home & T.As Department
2. PS to Special Secretary I, Home & TAs Department
3. PS to Special Secretary II, Home & TAs Department
4. Official Concerned
5. Master File

**Section Officer (L&K)
Home & TAs Department**



ANNEXURE

"C"

THE DEPUTY COMMISSIONER LOWER CHITRAL
COMMANDANT CHITRAL LEVIES CHITRAL

Tel: (0943) 412055, Fax: (0943) 412421 | Fb: -Twitter-Instagram: @DCLowerChitral

No. 1913/17 /DCC/CLC-

Dated Chitral 14th November, 2023

12


OFFICE ORDER:

In compliance of order of the Secretary Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department, Peshawar issued vide No. SO(L&K)/HD/LowerChitral/436-4 dated 8.11.2023 communicated vide Section Officer (L&K), Home Deptt. KP No. SO(L&K)/HD/Lower Chitral dated 13.11.2023, read with PATA Levies Force (Amendment) Act 2021. Constable/LNK (Hon) NOOR AKBAR, (EPN 00318722) of Lower Chitral Levies is hereby reinstated in his service with effect from 11.02.2022, and as per directions of the Secretary Govt of Khyber Pakhtunkhwa, Home & TAs Department vide Order above the intervening period (11.02.2022 to 14.11.2023) between his termination from service and reinstatement shall be considered as leave without pay.


DEPUTY COMMISSIONER
COMMANDANT

DISTRIBUTION LIST:

1. The Secretary Government of Khyber Pakhtunkhwa Home & TAs Department Peshawar with reference to the letter referred to above
2. The Assistant Commissioner / Dy Commandant Operations Levies for information
3. The District Accounts Officer Chitral for information and necessary action.
4. The Section Officer (L&K) Govt of KP Home & Tribal Affairs Department Peshawar with reference to letter quoted above.
5. LNK Noor Akbar Lower Chitral Levies for information and compliance


DEPUTY COMMISSIONER
COMMANDANT



ANNEXURE

"D"

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THE DEPUTY COMMISSIONER, LOWER CHITRAL
COMMANDANT CHITRAL LEVIES

Tel: (0943) 412055, Fax: (0943) 412421, FB: - Twitter: - Instagram: @DCLowerChitral

No. 1302/12 /DCC/CLC-20

Dated Chitral the 12th February, 2024

RETIREMENT ORDER:

In compliance with the Home & Tribal Affairs Department Khyber Pakhtunkhwa Letter No. SO(L&K)/HD/2-6/Chitral Lower/Noor Akbar/2024 dated 01.01.2024, Constable/LNK (Hon) Noor Akbar (BPS-7) of Chitral Levies (Lower Chitral), is hereby retired from his service with effect from 14.11.2023 (AN), on attaining the required length of service for retirement as per Schedule-III of the PATA Levies Service (Amended) Rule 2013 dated 21.10.2021; with full pension benefits as admissible under relevant pension rules, in the best interest of public service.

In pursuance of the Finance Department Notification No. SO(FR)/FD/5-92/2005/Vol-V dated 25.08.2017, Mr. Noor Akbar, Constable/LNK (Hon) Chitral Levies Lower Chitral is hereby allowed the encashment of LPR for 365 days as provided under Rule 20 of Government of NWFP, Civil Servants Revised Leave Rule 1981, *Mutatis Mutandis*.

DEPUTY COMMISSIONER
COMMANDANT

DISTRIBUTION FOR INFORMATION & NECESSARY ACTION:

1. The Secretary to Govt of Khyber Pakhtunkhwa Home & TAs Deptt Peshawar
2. The Commissioner Malakand Division Swat
3. The Additional Deputy Commissioner, Lower Chitral
4. The District Accounts Officer, Chitral
5. The Assistant Commissioner / Deputy Commandant Levies Lower Chitral
6. The Section Officer (L&K) Home and TAs Department Khyber Pakhtunkhwa Peshawar for information with reference to the Notification referred above.
7. The Accountant Chitral Levies
8. The Incharge Levies HQ Chitral
9. Official Concerned
10. Office record / Notice Board HQ

DEPUTY COMMISSIONER
COMMANDANT

(14) "E"

THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT OF KHYBER PAKHTUNKHWA HOME
AND TRIBAL AFFAIRS DEPARTMENT - PESHAWAR.

Secretary
Deputy Secretary
Secretary
Deputy Secretary
Deputy Secretary

SUBJECT: DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE ORDER DATED; 12-02-2024; OF DEPUTY COMMISSIONER CHITRAL LOWER; WHEREBY THE APPELLANT HAS BEEN RETIRED FROM SERVICE.

PRAYER; ON ACCEPTANCE OF THE INSTANT DEPARTMENTAL APPEAL/REPRESENTATION THE IMPUGNED OFFICE ORDER DATED; 12-02-2024 AND SUBSEQUENT ALL ORDERS/ NOTIFICATIONS ISSUED BY THE DEPUTY COMMISSIONER CHITRAL LOWER; BE SET ASIDE AND THE APPELLANT BE RE-INSTATED IN SERVICE WITH ALL BACK BENEFITS. ANY OTHER RELIEF DEEMS JUST AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO GRANTED TO THE APPELLANT.

RESPECTFULLY STATED;

Facts and Grounds giving rise to the instant departmental appeal are as under;

1. That the appellant in performance of his official duties remained posted at different risky places of Chitral borders for last 29 years.
2. That the appellant is performing his duties with great zeal, zest, devotion and dedication at his level best to the entire satisfaction of his superior's tenure of service in the subject post was exemplary and outstanding with effect to improve the entire system of maintenance, administration and discipline. Furthermore, his excellent service at Chitral Levies has been highly appreciated by high ups of the department with effect to assure task given by high ups in security, essential relief to flood and earth quick effectees of the district in 2015 disaster.
3. That the appellant was terminated from service vide order Dated; 11-02-2022, against which the appellant preferred departmental appeal before the Worthy Secretary Govt. of Khyber-Pakhtunkhwa, Home & Tribal Affairs Department, which has been accepted vide order Dated; 14-11-2023. Copy of dismissal order & Representation are as ANNEXURE "A" & "B".
4. That the Appellant in compliance to the order Dated; 14-11-2023, joined duties, but to the dismay of the appellant the Worthy Deputy Commissioner issued his retirement order vide order Dated; 12-02-2024, which has liable to be struck down on the following grounds. Copy of re-instatement into service and retirement from service are as ANNEXURE "C" & "D".

GROUNDS:

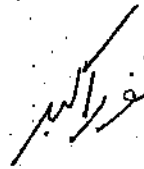
- A. That vide notification dated 14-07-2020, the Federal Levies Force Service rules 2013 were amended and the age of retirement has been fixed as sixty years, thereafter vide notification dated 22-03-2021, the rules were further amended and the age of retirement was reduced to 42 years in respect of Sepoy, Copy of Notifications dated; 14-07-2020 & dated; 22-03-2021 are annexed as ANNEXURE "E" & "F".
- B. That all the retired personal of levies force who retired prior to the introduction of the amendments in the rules Ibid, were reinstated vide PATA, Levies force amended act 2021, Copy of PATA, Levies force amended act 2021 as ANNEXURE "G".
- C. That the levies personal challenged the levies force rules 2013, amended on 22-03-2021, before the Honorable Khyber-Pakhtunkhwa Service Tribunal, Peshawar, which have been allowed with the directions to the provincial Govt. to frame rules for removing the anomalies inherent in the impugned amendments introduce in the levies force rules 2013. Copies service appeal along with judgment are ANNEXURE "H".
- D. That the appellant has been retired from service without any legal justification, as the rules under which the appellant has been retired has been struck down by the Honorable Tribunal.
- E. That admittedly there is no case exist, established or connect the appellant with any offence, miss conduct or negligence with effect to liable him for any departmental proceeding or penalty neither the ground of allegation is punishable, therefore to proceed and imposition of major penalty of retirement is void ab initio, illegal, unlawful and ineffective upon the terms and conditions of service of the appellant.
- F. That the impugned order is backed by illegal and irregular exercise of power and based on mis-application of law/rules on the subject as well as against the well settled norms of administration of justice, hence; highly illegal, arbitrary, cursory, whimsical and full of surmises and conjectures.
- G. That the impugned order to impose penalty is totally based on evasive and self-made grounds. In fact, the Deputy Commissioner has failed to proceed on the substantial reasons and exhibited lack of application of administrative mind. The impugned order is, therefore, liable to be struck down.
- H. That the appellant has rendered about 29 years exemplary and outstanding service to the Department and is qualified committed and entitle to continue his remaining service till with all pending and upcoming promotions.
- I. That the appellant has been retired prematurely irrespective of the fact that the appellant is entitled for promotion to the next higher grade as sufficient number of posts are still laying vacant.
- J. That the impugned notifications of amending relevant rules and retirement of the appellant thereunder is illegal and unconstitutional hence the same is liable to be struck down.

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- K. That it is a settled proposition of law that rules cannot be amended to the detriment of civil servant /employee, even, otherwise the same will have prospective effect and cannot be applied retrospectively.
- L. That the revised schedule 3 of the impugned amended rules is self-contradictory and discriminatory as well. The said schedule prescribed 60 years of age and certain maximum length of service for higher rank officials i.e Subedar Major, Subedar and Naib Subedar, while in case of lower rank officials like the appellant have been treated with discrimination by not extending full benefits of the rules ibid.
- M. That any other ground be furnished whenever required for the assistance of your good authority in support of his appeal.

It is, therefore, humbly prayed to allow the subject departmental appeal as prayed for.

Dated: - 06-03-2024



Appellant

*Noor Akbar L/Naik
Chitral Levies
District Lower Chitral
Cell No. 0346-9755485*

WAKALAT NAMA

17

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. /2024

Noor Akbar
(Appellant)

VERSUS

**GOVERNMENT OF KHYBER PAKHTUNKHWA, THROUGH Additional Chief
SECRETARY Home and Tas AFFAIR DEPARTMENT, & Others**
(Respondents)

I/we Noor Akbar / Appellant) hereby appoint and constitute **Sher Hyder Khan, Advocate High Court** as counsels (**For Appellant/ Petitioner**) in the above mentioned case, to do all or any of the following acts, deeds and things:-

- 1- To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2- To sign, verify and file or withdraw all proceedings, petitions, appeals, revision, review affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for the conduct, prosecution or defense of the said case at any stages.
- 3- To receive payment of and issue receipts for all money that may be or become due and payable to us during the course or on the conclusion of the proceedings. To do all other acts and things this may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocate may do in the proceedings.
- b) Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing.
- c) That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this

2nd Day of July, 2024, at Peshawar.

Accepted subject to term regarding payment of fee

SHER HYDER KHAN
ADVOCATE HIGH COURT
LL.B (Hons), LL.M (I-L)

The Magister & Associates
103, Said Anwar Plaza,
Dabgari Gardens Peshawar Cantt
Ph: 091-2214005 Cell: 0336-9377022

Signature of Appellant / Petitioner

