27.06.2022

Learned Member (Executive), is on leave. Therefore, the case is adjourned to 04.08.2022 for the same as before.

READER

Form- A

FORM OF ORDER SHEET

Court of			
-			

	Case No	213/2022
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/02/2022	The appeal of Mr. Saeedullh resubmitted today by Mr. Muhammad Arif Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
		REGISTRAR
2-		This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on
03	06/4/22	Appellant present. Com
		are at 16-05.2022
	16.05.2022	Learned counsel for the appellant present and
		requested for adjournment in order to further prepare
		the brief. Adjourned. To come up for preliminary
		hearing on 27.06.2022 before S.B.
		(Mian Muhammad) Member(E)

The appeal of Mr. Saeedullah no. 635 Ex-Constable District Police Nowshera received today i.e. on 17.02.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 488 /S.T,

Dt. 18/09 /2022

REGISTRAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Muhammad Arif Jan Adv. Pesh.

Kleir

Re submitted after removal of
Objection as, no enquery in
proper manner has been conducted
proper manner has been conducted
no any documents have been
provided to the appellent home
the instant appeal may kindly
the place before the Hornbo Benchr

22/2/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 213 /2022

Saeed Ullah No-635 (Ex-Constable District Police, Nowshera)Appellant

VERSUS

District Police Officer, Nowshera and othersRespondents

INDEX

S.No.	Description of documents.	Annexure	Pages
1.	Memo of appeal with affidavit.		1-6
2.	Application for condonation of		
	delay with affidavit		7-8
3.	Addresses of parties		9
4.	Copy of order dated 02-07-2019	Α	10
5.	Copies of departmental appeal and	B&C	
	order dt 24-11-2021	_	11-15
6.	Copy of departmental appeal	D	16-19
7.	Wakalatnama		20

Appellant)

Through

Muhammad Arif Jan Advocate High Court

Cell: 0333-2212213

Dated: 17.2.2022

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service	Appeal No/2022			
Saeed S/o Al Nowshe	Ullah No-635 (Ex-Constable District Police, Nowshera) bdullah Jan R/o Khudrezi, Tensil Pabbi, District era.			
	Appellant			
	<u>VERSUS</u>			
1.	District Police Officer, Nowshera.			
2.	Deputy Inspector General Police Region Mardan, District Mardan.			
3.	Inspector General of Police, Police Headquarters, Police Line, Peshawar.			
	Respondents			
	APPEAL U/S-4 OF KHYBER			
	PAKHTUNKHWA SERVICE TRIBUNAL			
	ACT, 1974 AGAINST THE IMPUGNED			
	ORDERS DATED 02-07-2019 AND 24-11-			
	2021 OF RESPONDENTS NO-1&2			
	RESPECTIVELY IN RESPECT OF			
	DISMISSAL FROM SERVICE OF THE			

Respectfully Sheweth:-

Appellant humbly submits as under

APPELLANT.



1. That the appellant was initially appointed as Police Constable on 02.12.1996 in the Police Department District Nowshera and had served the department with full zeal and zest and there is/ was no any complaint whatsoever been pending against the appellant.

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- That unfortunately, the appellant was implicated with mala-fide intentions in a criminal case FIR No.158 dated 23.02.2019 u/s 302/ 324/ 34 PPC of P.S Pabbi, District Nowshera.
- 3. That due to compelling situation as well as receiving the life threats from the opponents, the appellant was unable to keep and continue his duties, thus having no other option except to side from the scene.
- 4. That the appellant then surrendered himself being innocent before the competent Court of law and the pre-arrest bail was confirmed vide order dated 28.06.2021.
- 5. That the appellant was stunned when came into know about the impugned order passed by the worthy District Police Officer (Respondent No-1) in respect of dismissal from service vide order dt 02-07-2019, without holding any proper inquiry into the matter, thus approaches this hon'ble authority.(Copy of order dt 02-07-2019 is attached as ANNEX-A).
- 6. That the appellant then filed departmental appeal before respondent No-2 but the same is also turned down vide order dt 24-11-2021. It is worth mentioned here that neither the appellant was informed nor was communicated the copy of the above order dt 24-11-2021. The appellant approached time and again before

respondent No-2 for obtaining the copy of the order above and after repeated request the appellant was handed over the only the copy of the order on 28-1-2022. (Copies of departmental appeal and order dt 24-11-2021 are attached as ANNEX-B & C respectively).

- 7. That the appellant also filed departmental appeal before respondent No-3 but of no avail. (Copy of departmental appeal is attached as ANNEX-D).
- 8. That feeling aggrieved and having no other remedy except to approach this Hon'ble Tribunal on the following amongst other grounds.

GROUNDS:

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- A. Because, the orders/ letters dated 02-07-2019 and 24-11-2021 (hereinafter impugned) passed by respondents No.1 & 2 respectively against the appellant are patently illegal, unlawful, without lawful authority, of no legal effect, hence having no value in the eyes of law, thus be set-aside and the appellant may kindly be reinstated in his service with all back benefits.
- B. Because, while the passing the impugned orders, the respondents are badly failed to follow the existing Law, Rules and Regulations governing the subject matter, but on mere registration of FIR (brief mentioned therein), the respondents without holding proper inquiry in proper manner, passed the impugned orders in hasty manner by depriving the appellant from his legal and constitutional right of service.
- C. Because, the appellant has rightly been appointed by the competent authority and had served for about 24 years with-unblemished record by providing his services to the



entire satisfaction of his superiors, but while passing the impugned orders, the respondents also badly failed to consider the same thus this act of the respondents is amounts to abuse of Law.

- D. Because, the dishonest attitude of the respondents is even established from the non-holding proper inquiry into the matter and further also deprive the appellant to defend himself before the Inquiry Officer, but astonishingly ex-parte proceedings has been initiated against the appellant, hence invites consideration of this hon'ble Tribunal.
- E. Because, the appellant is highly qualified, well trained and well experience one also passed his departmental courses where the same are also not been considered, while passing the impugned orders.
- F. Because, the appellant is a poor person having children, wife & parents and the only bread winner of the entire family, thus there is no alternate source of income except the service in Police Department, hence the impugned orders are liable to be set-aside.
- G. Because, it is settled law that while passing any major punishment/ penalty, the authorities are required to hold proper inquiry into the matter, but in the present case, the competent authority has badly failed to follow the law, rules and regulation governing the subject matter.
- H. Because, it is also settled law that, no person should be condemned unheard, but in the present case, no opportunity of fair trial along with charge sheet, statement of allegation etc have been provided, thus the impugned



orders are based on "mala-fide as well as base upon the principle of "MIGHT IS RIGHT" .

 Because, the DPO (Respondent No-1) with a single stroke of sign, dismissed the appellant, knowingly the fact that the volume of about 24 years of unblemished service of the appellant.

2

- J. Because, the delay in filing of the departmental appeal if any was not intentional, rather due to continuous life threats, the appellant was unable to join his duties.
- K. Because, gallantry performance of the appellant is even established from the awarding of C-1 Certificate from the worthy I.G, appreciation certificate from the then worthy Chief Minister and also got appreciation certificates upon outstanding performance from the concerned DIGs. It is also worth mention here that, the appellant continuously received appreciation certificates in shape of cash amount from the concerned DPOs time and again.
- L. That any other ground, which has not specifically been mentioned may also be permitted to raise at the of hearing.

It is therefore, humbly prayed, On acceptance of the instant appeal, the impugned order dated 02-07-2019 and order dated 24.11.2021 passed by respondents No.1 & 2 respectively may very graciously be set-aside and the appellant may kindly be reinstated in his service with all back benefits and any other remedy deemed appropriate in the circumstances and not specifically asked for may kindly also be granted in favor of appellant.

Dated: 17-02-2021

Appellant

Through

Muhammad Arif Jan Advocate High Court

<u>AFFIDAVIT</u>

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent

(1)

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE</u> <u>TRIBUNAL, PESHAWAR</u>

Service Appeal No/2022
Saeed Ullah No-635 (Ex-Constable District Police, Nowshera)Appellant
<u>VERSUS</u>
District Police Officer, Nowshera and othersRespondents

<u>APPLICATION FOR CONDONATION OF</u> <u>DELAY IF ANY.</u>

Respectfully Sheweth;

- 1. That the appellant filing the accompanying appeal along with the instant application today.
- 2. That the contents of the main appeal may kindly also be considered as integral part of this application.
- 3. That the delay if any in filing the accompanying appeal was not intentional rather it was beyond the control and command of the appellant and in the compelling situation as and when received the copy of same thus approach this Hon'ble Tribunal.
- That there is no legal bar to file the instant application.
- 5. That there are series of judgments of the august Supreme Court of Pakistan that cases should be decided on merit, rather on the basis of technicalities.

It is, therefore, humbly prayed that, the delay in any may graciously be condoned in the interest of justice.

(8)

Applicant /petitioner

Through

Muhammad Arif Jan Advocate High Court

<u>AFFIDAVIT</u>

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

Deponent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No/2022
Saeed Ullah No-635 (Ex-Constable District Police, Nowshera)Appellant
<u>VERSUS</u>
District Police Officer, Nowshera and othersRespondents

ADDRESSES OF PARTIES

APPELLANT

Saeed Ullah No-635 (Ex-Constable District Police, Nowshera) S/o Abdullah Jan R/o Khudrezi, Tensil Pabbi, District Nowshera.

RESPONDENTS

- 1. District Police Officer, Nowshera.
- 2. Deputy Inspector General Police Region Mardan, District Mardan.
- 3. Inspector General of Police, Police Headquarters, Police Line, Peshawar.

Appellant Through

Muhammad Arif Jan

Advocate High Court

NOWSHERA DISTRICT

ORDER

This order will dispose off a departmental enquiry initiated under Khyber Pakhtunkhwa Police Rules-1975, against Constable Saeed Ullah No. 635, under the allegations that he while posted at DSB Staff, involved in case FIR No. 158 dated 23.02.2019 u/s 302/324/34 PPC PS Pabbi.

On account of which he was proceeded against departmentally through Mr. Tassawar Iqbal, ASP Cantt Nowshera, who after conducting enquiry submitted his report to undersigned vide his office Endst: No. 345/St: dated 05.04.2019, highlighted therein that the delinquent official is numinated accused in the said case and is evading from lawful arrest. He did not join investigation of the case to clarify his position and prove his innocence and suggested that the enquiry may be kept pending till conclusion of investigation and trial of the case.

SDPO Pabbi was directed to complete all codal formalities of proclamation, who after completion submitted his report to undersigned vide letter No. 295/S, dated 19.04.2019, reporting therein that proceedings u/s 204 Cr.PC (warrant), hue and cry u/s 87 Cr.PC as well all the proclamation proceedings were completed against him and the case was challaned to court u/s 512 Cr.PC.

Final Show Cause Notice was issued against him, which was served through l'akhri Alam s/o Akhtar Munir (relative of FC Saeed Ullah) on 14.06.2019, but he failed to submit his reply within the stipulated time.

In the light of above discussion, Constable Saeed Ullah No. 635 is hereby awarded major punishment of dismissal from service with effect from 23.02.2019, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules-1975.

OB No. <u>70/</u> Dated <u>02/07</u>/2019

No. 3666- 69/PA, dated Nowshera, the

02/07 12019.

strict Police Officer, Nowshera

Copy for information and necessary action to the:

1: Pay Officer,

2. Establishment Clerk.

OHC.

4. FMC with its enclosures (12 sheets).

BEFORE THE WORTHY DEPUTY INSPECTOR OF POLICE (DIG), REGION MARDAN An CA-

Subject: <u>DEPARTMENTAL APPEAL AGAINST THE</u>

<u>IMPUGNED ORDER BEARING NO.3066-69</u>

<u>DATED 02.07.2019 VIDE WHICH THE</u>

<u>APPELLANT HAVE BEEN DISMISSED FROM</u>

SERVICE.

Respected Sir;

- That the appellant was initially appointed as Police Constable on 02.12.1996 in the Police Department District Nowshera and had served the department with full zeal and zest and there is/was no any complaint whatsoever been pending against the appellant.
- 2. That the appellant always preferred the honor and dignity of service and never remained absent nor having any adverse entry in the entire service/ service book.
- 3. That unfortunately, the appellant was implicated with malafide intentions in a criminal case FIR No.158 dated 23.02.2019 u/s 302/ 324/ 34 PPC of P.S Pabbi, District Nowshera.
- 4. That due to compelling situation as well as receiving the life threats from the opponents, the appellant was unable to keep and continue his duties, thus having no other option except to side from the scene.
- 5. That the appellant then surrendered himself being innocent before the competent Court of law and the prearrest bail was confirmed vide order dated 28.06.2021.

6. That the appellant was stunned when came into know about the impugned order passed by the worthy District Police Officer, without holding any proper inquiry into the matter, thus approaches this hon'ble authority.

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- 7. That no any show cause notice issued to the appellant nor served upon the appellant in a proper manner, hence the impugned order is amounts to abuse of law.
- 8. That it is settled law for the competent authorities that while passing any major punishment/ penalty, the authorities are required to hold proper inquiry into the matter, but in the present case, the competent authority has badly failed to follow the law, rules and regulation governing the subject matter.
- 9. That it is also settled law that, no person should be condemned unheard, but in the present case no opportunity of fair trial alongwith charge sheet, statement of allegation etc have been ignored, thus the impugned order is based on "malafide as well as MIGHT IS RIGHT"
- 10. That the DPO concerned with a single stroke of sign, dismissed the appellant, knowingly the fact that the volume of about 24 years of unblemished service.
- 11. That the delay in filing of the departmental appeal if any is not intentional, rather due to continuous life threats, the appellant was unable to join his duties.
- 12. That gallantry performance of the appellant is even established from the awarding of C-1 Certificate from the worthy I.G, appreciation certificate from the then worthy Chief Minister and also got appreciation certificates upon

outstanding performance from the concerned DIGs. It is also worth mention here that, the appellant continuously received appreciation certificates in shape of cash amount from the concerned DPOs time and again.

(13)

It is, therefore, humbly prayed that, on acceptance of the instant departmental appeal, the impugned order dated 02.07.2019 may graciously be set-aside/ withdrawn and the appellant may kindly be reinstated into his service with all back benefits and further to allow to keep and continue his service/duties.

Any other relief deemed fit may also be graciously granted in favour of the appellant.

Enclosed: All necessary documents

Dated: 13.07.2021

Applicant

Saeed Ullah Jan S/o Abdullah Jan Ex-Constable 635

District Police Office, Nowshera.

Cell: 0333-9724355

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Saeed Ullah No. 635 of Nowshera District Police, against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB: No. 701 dated 02.07.2019. The appellant was proceeded against departmentally on the allegations that he while posted at DSB Staff, Nowshera, involved in case FIR No. 158 dated 23.02.2019 u/s 302/324/34-PPC Police Station Pabbi District Nowshera.

mned.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Assistant Superintendent of Police, (ASP) Cantt, Nowshera was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings wherein he highlighted that that the delinquent Officer is nominated as accused in the said case and is evading from lawful arrest. He did not join investigation of the case to clarify his position and prove his innocence and suggested that the enquiry may be kept pending till conclusion of investigation and trial of the case. However, after completion of proclamation proceedings, challan u/s 512 Cr.PC was submitted to the Court concerned.

He was issued Final Show Cause Notice, which was served through Fakhri Alam s/o Akhtar Munir (relative of appellant Saeed Ullah) on 14.06.2019, but he failed to submit his reply within the stipulated time. Therefore, he was awarded major punishment of dismissal from service from the date of his absence vide OB: No. 701 dated 02.07.2019.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 24.08.2021.

However, de-novo enquiry proceedings were entrusted to the Superintendent of Police Investigation, Nowshera vide this office endorsement No. 4580/ES dated 25.08.2021 for probing into the matter. The enquiry Officer after conducting thorough probe submitted his findings. Hence, the appellant was again summoned and heard in person in orderly room held in this office on 24.11.2021 but he failed to justify the inordinate delay in filing departmental appeal.



From the perusal of the enquiry file and service record of the appellant, it has been found that the appellant was dismissed from service vide OB: No. 701 dated 02.07.2019 but he preferred the departmental appeal with the delay of 02 years, 01 month & 01 day without advancing any cogent reason, hence, highly time barred.

Based on the above, I, Yaseen Farooq, PSP Regional Police Officer, Mardan, being the appellate authority, finds no substance in the appeal, therefore, the same is rejected and filed, being badly time barred.

Order Announced.

Regional Police Officer, Mardan.

No. 6754 JES, Dated Mardan the 24 /// /2021

Copy forwarded to District Police Officer, Nowshera for information and necessary. His Service Record is returned herewith.

(*****)

BEFORE THE WORTHY INSPECTOR OF POLICE (IG), KHYBER PAKHTUNKHWA Annea

Subject: <u>DEPARTMENTAL APPEAL AGAINST THE</u>

<u>IMPUGNED ORDER BEARING NO.3066-69</u>

<u>DATED 02.07.2019 VIDE WHICH THE</u>

<u>APPELLANT HAVE BEEN DISMISSED FROM</u>

SERVICE.

Respected Sir;

- 1. That the appellant was initially appointed as Police Constable on 02.12.1996 in the Police Department District Nowshera and had served the department with full zeal and zest and there is/ was no any complaint whatsoever been pending against the appellant.
- That the appellant always preferred the honor and dignity of service and never remained absent nor having any adverse entry in the entire service/ service book.
- 3. That unfortunately, the appellant was implicated with malafide intentions in a criminal case FIR No.158 dated 23.02.2019 u/s 302/ 324/ 34 PPC of P.S Pabbi, District Nowshera.
- 4. That due to compelling situation as well as receiving the life threats from the opponents, the appellant was unable to keep and continue his duties, thus having no other option except to side from the scene.
- 5. That the appellant then surrendered himself being innocent before the competent Court of law and the prearrest bail was confirmed vide order dated 28.06.2021.

16

6. That the appellant was stunned when came to know about the impugned order passed by the worthy District Police Officer, without holding any proper inquiry into the matter, thus approaches this hon ble authority.



- 7. That no any show cause notice issued to the appellant nor served upon the appellant in a proper manner, hence the impugned order is amounts to abuse of law.
- 8. That it is settled law for the competent authorities that while passing any major punishment/ penalty, the authorities are required to hold proper inquiry into the matter, but in the present case, the competent authority has badly failed to follow the law, rules and regulation governing the subject matter.
- 9. That it is also settled law that, no person should be condemned unheard, but in the present case no opportunity of fair trial alongwith charge sheet, statement of allegation etc have been ignored, thus the impugned order is based on "malafide as well as MIGHT IS RIGHT".
- 10. That the DPO concerned with a single stroke of sign; dismissed the appellant, knowingly the fact that the volume of about 24 years of unblemished service.
- 11. That the delay in filing of the departmental appeal if any is not intentional, rather due to continuous life threats, the appellant was unable to join his duties.
- 12. That it is pertinent to mention that an inquiry was conducted by the Inquiry Officer of Case FIR No.158 which was completed and appellant was declared innocent because the appellant had a strong alibi in

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Shape of testimony of Paish e Imam Molana Sami ur Rehman along with other peoples (Moqtadis) (Mohtamim of Madrassa/ Masjid Tafhimul Quran) that appellant was performing Nimaz e Maghrib at the relevant time in the Masjid mentioned above situated at Pabbi Station, hence appellant was declared innocent in the inquiry report.

13. That gallantry performance of the appellant is even established from the awarding of C-1 Certificate from your worthy office, appreciation certificate from the then worthy Chief Minister and also got appreciation certificates upon outstanding performance from the concerned DIGs. It is also worth mention here that, the appellant continuously received appreciation certificates in shape of cash amount from the concerned DPOs time and again.

It is, therefore, humbly prayed that, on acceptance of the instant departmental appeal, the impugned order dated 02.07.2019 may graciously be set-aside/ withdrawn and the appellant may kindly be reinstated into his service with all back benefits and further to allow to keep and continue his service/duties.

Any other relief deemed fit may also be graciously granted in favour of the appellant.

Enclosed: All necessary documents

Dated: 01.22.2022

Applicant

Saeed Ullah Jan S/o Abdullah Jan

Ex-Constable 635
District Police Office, Nowshera.

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Cell: 0333-9724355

BEFORE THE WORTHY INSPECTOR GENERAL OF POLICE (IG), KHYBER PAKHTUNKHWA



<u>APPLICATION FOR CONDONATION OF</u> <u>DELAY IF ANY</u>

Respected Sir;

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- 1. That the appellant filing the accompanying appeal alongwith the instant application today.
- 2. That the contents of the main appeal may kindly also be considered as integral part of this application.
- 3. That the delay if any in filing the accompanying appeal was not intentional rather it was beyond the control and command of the appellant and in the compelling situation while receiving continuous life threats from the opponents, the appellant was unable to join his duties, hence the instant application.
- 4. That there is no legal bar to file the instant application.
- 5. That there are series of judgments of the august Supreme Court of Pakistan that cases should be decided on merit, rather on the basis of technicalities.

It is, therefore, humbly requested that, the delay in any may graciously be condoned in the interest of justice.

Dated: 01.22.2022

Applicant

Saeed Ullah Jan S/o Abdullah Jan Ex-Constable 635

District Police Office, Nowshera.

Cell: 0333-9724355

بنام دسركث لوليس دعوى برم باعث تحريرا نكه مقدمه مندرج عنوان بالامين اپن طرف سے داسطے بیروی وجواب دہی دکل کاروائی متعلقه ان مام كن و ما ما العُمام كن العَمام كن العُمام كن العَمام كن العَ مقرركر كا تراركيا جاتا ہے۔ كرما حب موصوف كومقدمه كى كل كاروائى كا كامل اختيار ، وكا ينز وكيل صاحب كوراضى نامه كرنے وتقرر ثالت و فيصله برحلف ديئے جواب وہ ما اورا قبال وعوى اور بسورت درخواست برتم كي تقديق زراي بردستخط كرافي اختيار موكافي وصورت عدم بيروى يا وكرى يكطرف يا بيل كى برامد كى اورمنسونى نیز دائر کرنے اپیل تکرانی ونظر ٹانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ ندکور ككل ياجزوى كاروائى ك واسط اوروكيل ما مخارقا لونى كواسية مراه ما اسيغ بجاع تقرركا اختيار موكا _اورها حب مقررشده كوبهي واي جمله فدكوره بااختيارات حاصل مول مياوراس كاساخت برواخت منظور قبول ہوگا۔ بعدان مقدمہ میں جوخر چدد ہرجان التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ بیشی مقام دور مرا او احدے باہر موتووکیل صاحب پابند موں کے۔ کہ بیروی ند کور کریں۔لہذا و کالت ناکہ کھیا یا کہ سندر ہے۔