


22.07.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Implementation report not submitted. Learned District Attorney seeks time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 19.09.2022 before S.B.

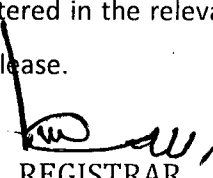




(Mian Muhammad)
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 135/2022

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 08.03.2022 | <p>The execution petition of Mr. Zakir Ullah submitted today by Mr. Rafi Ullah Wazir Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This execution petition be put up before to Single Bench at Peshawar on <u>18-05-2022</u>. Original file be requisite. Notices to the appellatant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| 2- | 18.05.2022 | <p>Learned counsel for the petitioner present.</p> <p>Notice of the present execution petition be issued to the respondents for submission of implementation report. To come up for implementation report on 22.07.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p> |

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Implementation petition No. 135 / 2022

Zakir Ullah

.....Petitioner.

VERSUS

DPO, Bannu & another.

.....Respondents.


I N D E X

| Sr. No. | Description of Documents | Annexure | Page No. |
|---------|--|----------|----------|
| 1) | Memo of Petition Along with Affidavit and Addresses of the Parties | | 1-4 |
| 2) | Copy of Memo of appeal & Judgment dated:13-01-2022 | A & B | 5-13 |
| 3) | Waqalat Nama | | 14 |

PETITIONER .

Dated:08.03.2022.

Through:-


Farhan Ullah shabanzai

&


Rafi Ullah Wazir
Advocate High Court,
PESHAWAR

Cell No.0321-9171522,03340986886

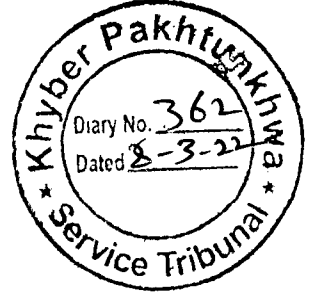
Office- F.F :30, 5th Floor, Bilour Plaza Peshawar Cantt,

Email : farhanullah190@gmail.com

1

BEFORE THE HON'BLE K.P.K SERVICES TRIBUNAL, PESHAWAR.

Implementation Petition No. 135 / 2022.
In
Service Appeal No. 15576 of 2020



Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel,
District Bannu, ex. Constable (1436), District Police, Bannu.

.....Appellant.

VERSUS

- 1) District Police Officer, DPO, Bannu.
- 2) Superintendent of police, Investigation, Police Headquarters, Bannu.
- 3) Deputy Superintendent of police, Headquarters, Bannu.
- 4) Deputy Inspector General of Police Bannu, Region Bannu.
- 5) Regional Police Officer, Bannu Region, Bannu.

.....Respondents.

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENT DEPARTMENT TO IMPLEMENT THE
JUDGMENT DATED: 13-01-2022 PASSED IN SERVICE
APPEAL NO.15576/2020 IN LETTER AND SPIRIT.

Respectfully Sheweth:-

1. That Petitioner/appellant file an appeal before this Hon'able Service Tribunal for Re-instatement along with all back benefits, respondent department contested the same and after hearing the argument of the parties, thea Service Appeal No.15576/2020 was allowed vide order & Judgment dated: 13-01-2022.
(Copy of the memo of appeal & Judgment dated: 13-01-2022 is annexed as A & B respectively)
2. That not issuing appointment order & not granting back benefits to the petitioner is illegal, wrong and without any justification & violation of the ibid Judgment (13-01-2022).

2

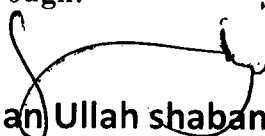
3. That order & judgment of this Hon'able Tribunal was duly communicated to the department concern for implementation but despite clear orders & directions of this Hon'able Tribunal, the department has shut their eyes on the rights of the petitioner fail to implement the orders & Judgment of this Hon'able Tribunal.
4. That despite of clear directions/ observation passed by this Hon'able tribunal the petitioner is facing the agony and grievances of the petitioner has not been redressed rather petitioner has been treated as rolling stone, as such vested rights of the petitioner has been kept delay by one pretext or the other, which is clear violation of service tribunal ibid judgment.
5. That rights of the petitioner not been dealt in accordance with the ibid judgment, hence this Hon'able tribunal by virtue of Sub-Section 2(d) of Section 07 of the KPK Service Tribunal Act, 1974 read with Rule 27 of the KP service Tribunal Rules; 1974 is empowered to execute / implement its judgment dated: 13-01-2022 in its letter & spirit against the respondents.
6. That in 2017 PLC (C.S) 1102 it was held--- "*Judgment of service tribunal, implementation of---scope---Service Tribunal being civil court for the purpose of deciding appeal had all the powers of civil court including those required to implement its judgment as provided under the provisions of civil procedure code, 1908 ... Employee had an alternate, speedy and efficacious remedy for enforcement of judgment of service tribunal...Employee could approach the proper forum if desired.*"
Hence respondents are duty bound to implement ibid judgment while this hon'able tribunal is the proper forum to rescue & protect the rights of the petitioner to overcome the mental and financial agony of the petitioner, failing to comply the order of this Hon'able tribunal the concern respondent may also be proceeded in accordance with law.

It is therefore humbly prayed that the instant execution / implementation petition may kindly be allowed as prayed for in the heading.

زاکر اللہ
PETITIONER

Dated: 08 /03/2022

Through:-


Farhan Ullah shabanzai & Rafi Ullah Wazir
Advocate High Court, Peshawar
PESHAWAR

(A)

(3)

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Implementation petition No. _____ / 2022.

Zakir Ullah

.....Petitioner.

VERSUS

DPO, Bannu & another.

.....Respondents.

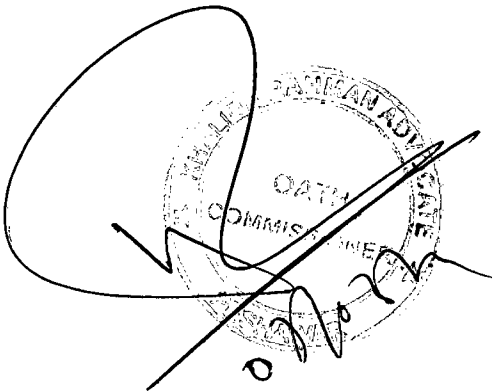
AFFIDAVIT

I, Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel, District Bannu, ex. Constable (1436), District Police, Bannu, do hereby solemnly affirm and states on oath that the contents of accompanying petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon' able Court.

زاکر ایلّا
(Deponent)

CNIC No#11101-1335755-3

ATTESTED



4

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Implementation petition No. _____ / 2022.

Zakir Ullah
.....Petitioner.

VERSUS

DPO, Bannu & another.
.....Respondents.

ADDRESSES OF THE PARTIES

Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel,
District Bannu, ex. Constable (1436), District Police, Bannu
.....Petitioner.

VERSUS

- 1) District Police Officer, DPO, Bannu.
 - 2) Superintendent of police, Investigation, Police Headquarters, Bannu.
 - 3) Deputy Superintendent of police, Headquarters, Bannu.
 - 4) Deputy Inspector General of Police Bannu, Region Bannu.
 - 5) Regional Police Officer, Bannu Region, Bannu.
-Respondents.

PETITIONER

Dated:08.03.2022.

Through:-


Farhan Ullah shabarzai

&


Rafi Ullah Wazir
Advocate High Court, Peshawar

5

Annex "A"

BEFORE THE K.P.K SERVICES TRIBUNAL PESHAWAR.

Appeal No. 15576 / 2020

Khyber Pakhtunkhwa
Service Tribunal

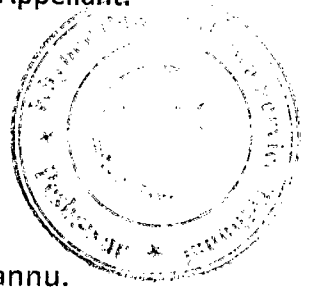
Diary No. 16059

Dated 03/12/2020

Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel,
District Bannu, ex. Constable (1436), District Police, Bannu.

.....Appellant.

VERSUS



- 1) District Police Officer, DPO, Bannu.
- 2) Superintendent of police, Investigation, Police Headquarters, Bannu.
- 3) Deputy Superintendent of police, Headquarters, Bannu.
- 4) Deputy Inspector General of Police Bannu, Region Bannu.
- 5) Regional Police Officer, Bannu Region, Bannu.

.....Respondents.

APPEAL U/S 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974
 AGAINST THE ORDERS DATED:22/06/2018 of respondent
No.01 and 13/11/2020, of respondent No.04, WHEREBY
 DEPARTMENTAL APPEAL OF THE APPELLANT WAS
 DISMISSED BY RESPONDENT NO.04 AND EARLIER ORDER
 OF RESPONDENT NO.1 OF THE APPELLANT TERMINATION
 FROM SERVICE WAS MAINTAINED.

Filed to-day
 Registrar
3/12/2020

PRAYER

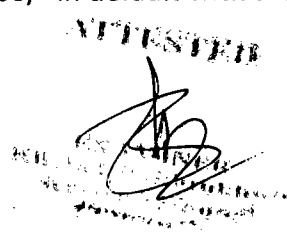
On acceptance of the appeal the both the order dated:
22/06/2018 & 13/11/2020 of respondents No.1 & 4, may
 graciously be set aside, and the appellant may graciously
 be reinstated in service with all back benefits etc, and any
 other orders deem proper may also be passed in the
 matter.

Signature
 Registrar

(B)

Respectfully Sheweth:-

1. That the appellatant was appointed as Constable (BPS-05), in the police department vide office order dated:09-06-2007, and during his entire service he has got no adverse remarks or any other charge and as such having an excellent record and spot less service.
2. That on 15/05/2018 the appellatant was coming from Thall Bazaar to Bannu, in the meantime a motorcar came the appellatant inquired from the driver that whether he is going to Bannu as such appellatant boarded in the said motorcar at Rs.700/- fare, as the motorcar reached Gurguri Police Station, at Kundi Check post, Karak, it was stopped and on checking the alleged contrabands was recovered, as petitioner has got no conscious knowledge about the alleged contrabands being a front seater, as such police officials charged appellatant in false and concocted criminal case vide FIR No.151, Dated: 15-05-2018, U/S-9-C, CNSA 1997, of P.S:Gurguri, District Karak.
(Copy of FIR is annexed as A)
3. That appellatant along with driver (A zeem Ullah) of the said motorcar were arrested, although appellatant from jail submitted application to SP investigation along with Affidavits about his innocence but the same was not considered.
4. That case of the appellatant was forwarded to the respondent No.03 for conducting of departmental inquiry proceedings against the appellatant as such after the inquiry, the said officer submitted his recommendation vide inquiry and upon the recommendations of inquiry report dated: 21-06-2018.
(Copy inquiry report dated: 21-06-2018 is annexed as B)
5. That after receipt of departmental inquiry report respondent No.01, issued impugned order dated: 22-06-2018 whereby major punishment of termination from service with immediate effect was imposed upon the appellatant.
(Copy of Impugned orders dated: 22-06-2018 is annexed as C)
6. That in the said FIR complete Challan against the appellatant in case FIR No.151, dated:15-05-2018 was submitted for trial before the Hon'able Additional Session Judge/ Judge Special Court, Banda Daud Shah, District Karak, after trial the appellatant along with Co-accused Azeem Ullah were convicted and sentence to life imprisonment along with fine of Rs.1,00,000/- in default with six months S.I vide order & judgment dated: 26-02-2019.

ATTESTED


7. That being aggrieved from the order of the trial court appellant file Cr.A No.47-B of 2019 while co-accused Azeem Ullah file Cr.A No.47-B of 2019, as both the appeal have arisen from one and the same order, the Hon'able Peshawar High Court Bannu Bench has decided both the Appeals were disposed off through one detail judgment, whereby the appellate court allowed both the appeals and acquitted the appellant vide order & judgment dated: 08-09-2020.
(Copy appeal & judgment of the appellate court are annexed as D & E)

1) That after the release of the appellant from custody, being aggrieved from the impugned orders of respondent No.01 dated:22-06-2018, the appellant filed a departmental appeal/representation, which was not considered and departmental appeal of the appellant was dismissed by respondent No.04 vide impugned order dated: 13-11-2020.

(Copy of departmental appeal & impugned order dated: 13-11-2020 are annexed as F & G)

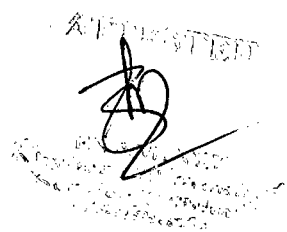
2) That the appellant now approaches this Hon,able court / tribunal for setting aside both the impugned orders and re-instatement in service on the following grounds amongst others.

G R O U N D S .

A. That the both the orders of the respondent No.1 & 4 are against the law, facts and violation of the procedure as provided under the law, hence the same is liable to be struck down.

B. That so-called departmental inquiry proceeding has not been initiated in accordance with proper procedure, and the entire proceeding has been completed in haphazard manner, hence the same is having no sanctity in the eye of law.

C. That as per story of the prosecution alleged recovery of contrabands was effected from the Deggi of the said motorcar, wherein appellant was on the front seat of the vehicle, but no conscious Knowledge of the appellant was established on the record by the prosecution, as such appellant was only punished for taking the services of the said motorcar as taxi, and appellant has got no knowledge about any alleged recovery.

ACQUITTED


- D. That now on one hand the learned appellate court after examination of record and evidence reached to the conclusion that appellant was innocent while on the other hand there is a one sided departmental inquiry proceedings, hence in the scale of justice sanctity will be attracted to the judicial proceedings as the same is based on the proper appreciating of record & evidence, hence the recommendations of the inquiry officer cannot be called as free & partial, hence the impugned orders passed by respondent no.1 & 4 on the basis of inquiry report is liable to be set-aside.

- E. That nor proper opportunity of hearing was provided to the appellant, as such the basic principle of natural justice is violated in the case of the appellant.

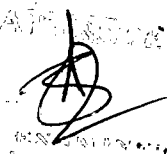
- F. That being a regular employee the appellant has served the department honestly and whole heartedly for sufficient time, and perform his duties candidly and unequivocally thus the appellant cannot be terminated from his service with a stroke of pen as done by the respondent No.1 & 4.

- G. That the conduct of the respondent No.1 & 4 clearly suggests that appellant has highly been discriminated which is not permissible under the constitution of Islamic Republic of Pakistan 1973.

- H. That absence of the appellant with neither willful nor intentional rather the termination orders of the appellant shows the reason of his absence was due to implication in a false and concocted case, thus the same cannot be treated a ground for termination of the services of the appellant.

- I. That as per facts and circumstances of the case the appellant was in custody and after his acquittal orders dated: 08-09-2020 the appellant file department appeal within a period of one month, wherein departmental appeal of the appellant was decided on 13-11-2020 and now the appellant within a period of one month file the instant service appeal, hence the appeal of the appellant is well within time, as per law laid down in the PLD 2010 SC Page-695 citation H.

- J. The contents of the departmental appeal/representation may be considered as integral part of the instant appeal.

APPELLANT

STATE BAR ASSOCIATION
SHERAT-UL-ADL
CHANDIYAN
ISLAMABAD


K. That on the permission of this Hon, able court the appellant may urge other additional ground if any, at the time of arguments.

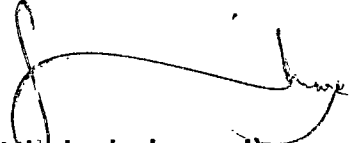
It is therefore most humbly prayed that On acceptance of the appeal both the impugned orders of respondent No.01 & 04 dated:22-06-2018 & 13-11-2020, may graciously be set aside, and the appellant may graciously be reinstated in service with all back benefits etc, and any other orders deem proper may also be passed in the matter

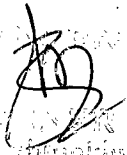

APPELLANT

Dated; 03/12/2020.

Through:-


(Rafi Ullah KHAN Wazir)
Advocate Peshawar,
PESHAWAR


(Farhan Ullah shabanzai)
Advocate High Court,
PESHAWAR


Advocate High Court,
PESHAWAR

01/02/22
2000
22/-
4/-
26/-
01/02/22
01/02/22

(10)

Annex 'B'

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15576/2020

Date of Institution ... 03.12.2020

Date of Decision ... 13.01.2022



Zakir Ullah S/O Babri Gul R/O Landi Jalandher, Domel, Tehsil Domel, District Bannu, Ex-Constable (1436), District Police, Bannu.

... (Appellant)

VERSUS

District Police Officer, DPO, Bannu and four others.

... (Respondents)

Farhan Ullah Shahbanzai,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

Wh

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as constable in police department, was charged in FIR dated 15-05-2018 U/S 9 CNSA and was arrested. Simultaneously, the appellant was proceeded against departmentally, and was ultimately dismissed from service vide order dated 22-06-2018, but in criminal case the appellant was acquitted of the charges by the Honorable High Court vide judgment dated 08-09-2020 and after release from jail, the appellant filed departmental appeal dated 28-10-2020, which was rejected vide order dated 13-11-2020, hence the instant service appeal with prayers that the impugned orders dated 22-06-2018 and 13-11-2020 may be set aside and the appellant may be reinstated in service with all back benefits.

APPOINTED

[Signature]
Member (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

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02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, hence are liable to be set aside; that the appellant has not been treated in accordance with law, as the appellant was not associated with proceedings of the inquiry; that the appellant was not afforded appropriate opportunity of defense, as such basic principle of natural justice is violated in the case of the appellant; that the appellant was exonerated of the same charges, upon which he was dismissed from service, hence there remains no reason to maintain the penalty so awarded; that absence of the appellant was neither willful nor intentional, rather due to compelling reasons of his arrest due to involvement in a criminal case, thus the same cannot be treated a ground for dismissal of the services of the appellant; that after his acquittal from the criminal case, the appellant filed departmental appeal within a period of one month, which was required to be considered in light of police rules 1934.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was charged in an FIR Dated 15-05-2018 U/S 9CNSA(C); that due to criminal charges against him, the appellant was proceeded departmentally by serving a proper charge sheet/statement of allegation and DSP Headquarter was appointed as inquiry officer; that after impartial inquiry the appellant was found guilty of misconduct and was recommended by the inquiry officer for major punishment, hence he was awarded major penalty of dismissal from service vide order dated 22-06-2018.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was charged in FIR Dated 15-05-2018 u/s 9 CNSA and was arrested on the spot. Simultaneously departmental proceedings were also initiated against him and because of departmental proceedings, the appellant was dismissed from service vide order dated 22-06-

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2018. In the meanwhile, the appellant was acquitted of the charges by the competent court of law vide judgment dated 08-09-2020.

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law.

Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. The respondents however did not honor their own rules and dismissed the appellants in violation of rules.

07. As per provisions contained in Section 16:3 of Khyber Pakhtunkhwa Police Rules, 1934, the respondents were bound to re-instate the appellant after earning acquittal from the same charges, upon which the appellant was dismissed from service, but the respondents despite his acquittal, did not consider his departmental appeal ignoring the verdict of the court as well as of Police Rules, 1934. The respondents also violated section-54 of Fundamental Rules by not reinstating the appellant after earning acquittal from the criminal charges. In a manner, the appellant was illegally kept away from performance of his duty. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar




13

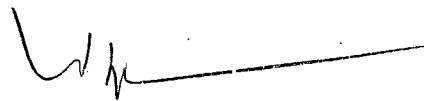
to take action and impose major penalty. Reliance is placed on 2003 SCMR 207, 2002 SCMR 57 and 1993 PLC (CS) 460.

08. Dealing with the question of delay in submission of departmental appeal, it is pointed out that the appellant preferred departmental appeal within one month after his acquittal from the criminal charge, which was well within time as the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well-settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

09. Needless to mention that disciplinary proceedings so conducted are also replete with deficiencies as the appellant was kept deprived of the opportunity to defend his cause. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.




ANNOUNCED
13.01.2022


(ROZINA REHMAN)
MEMBER (J)


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

01/02/22 Certified to be true copy
1600
18/-
4/-
22/-
EX-DIRECTOR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
01/02/2022
01/02/2022
Date of delivery of copy

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| ایڈوکیٹ: <u>رضیحہ ایشہ وزیر</u> | | پشاور بار ایسوسی ایشن، خیبر پختونخواہ | | |
| بار کونسل / ایسوسی ایشن نمبر: <u>BC-18-1215</u> | | | | |
| رابطہ نمبر: <u>0334-5986886</u> | | | | |


بعدالت جناب: جنرلین K.P.K سروس ٹرمینول پشاور

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|--|----------------------|-----------|
|  | مخانب: <u>پیشینہ</u> | دعوی: |
| | | علت نمبر: |
| | | موازنہ: |
| | | جرم: |
| | | تھانہ: |
| باعت تحریر آگہ | | |

ڈاکٹر ایڈووکیٹ
ڈاکٹر ایڈووکیٹ
ڈاکٹر ایڈووکیٹ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے ضرعان اللہ منیر انزلی بندہ رضی اللہ عنہم کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کر کے وافر ثالث و فیصلہ بر حلف دینے جو اب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار کوئی ایسا شخص سے سزا دیا جائے تو اسے سزا دینے کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیار حاصل ہوں گے اور ان کا سزا سننے پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

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مقام پشاور کے لیے منظور ہے۔

Accepted by

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

