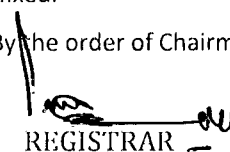


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 575/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.09.2022	<p>The execution petition of Mr. Sadiq Anwar submitted today by Mr. Abdul Hameed Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 575 /2022

In

Service Appeal No.989/2019

Sadiq Anwar

Versus

Provincial Police Officer and others

INDEX

S.No.	Description of Documents	Annexure	Pages
1.	Memo of Execution Petition alongwith Affidavit	_____	1-3
2.	Copy of the judgment dated 08.10.2021	A	4-10
3.	Copy of the minutes of scrutiny committee meeting held on 30.3.2022	B	11
4.	Copy of application dated 22.7.2022	C	12
5.	Wakalatnama	In original	

Sadiq Anwar
Petitioners/Applicant

Through

Abdul Hameed
(ABDUL HAMEED)

Advocate Peshawar

BC-10-7605

0343-9025029

Tel:

091-5823468

PESHAWAR

27-09-2022

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Execution Petition No. 575 /2022

In

Service Appeal No.989/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1444

Dated 27-9-2022

Sadiq Anwar constable No.422/FC s/o Gul Nazif Khan Police Lines
Bannu.....**PETITIONER**

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Bannu Region, Bannu
3. The District Police Officer, District Bannu

.....**RESPONDENTS**

**EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO
IMPLEMENT THE JUDGMENT DATED 08.10.2021 OF THIS HON'BLE
TRIBUNAL IN LETTER AND SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the petitioner/appellant filed Service Appeal No.989/2019 in this Hon'ble Service Tribunal against order dated 21.01.2015 passed by the District Police Officer, Bannu (Respondent No.3), wherein the petitioner (the then appellant) was awarded major penalty of dismissal from service.
2. That the said appeal was finally heard by this Hon'ble Tribunal on 08.10.2021 and this Tribunal accepted the appeal of the petitioner/appellant in the following terms:

"For what has gone above, the appeal at hand is accepted. Consequently, the impugned order is set aside and the appellant is reinstated into service from the date of his dismissal. As far as back benefits are concerned, the appellant was required to be treated in accordance with Rule 16.2(2) read with Rule 16.19 and 16.20 of the Police Rules, 1934. Therefore, the period during which he remained out of service from the date of his involvement in the criminal case till his conviction at

the trial shall be treated as the period under suspension and he shall be entitled for grant of the arrears of subsistence allowance as per rules. The period of detention of the appellant in prison as convict and the subsequent period after his acquittal shall be treated as leave kind due"

(Certified copy of the judgment dated 08.10.2021 is attached as Annex-A)

3. That on receipt of the aforesaid judgment, the Respondents approached law department for filing CPLA against the judgment dated 08.10.2021 passed in Service Appeal No.989/2019. However, the scrutiny committee in the law department, KP, in its meeting held on 30.03.2022 did not approve the case for filing CPLA and declared that the subject case is not fit case for filing of Appeal/CPLA in the Supreme Court of Pakistan.

(Copy of the minutes of scrutiny committee meeting held on 30.3.2022 is attached as Annex-B)

4. That thereafter the petitioner was reinstated into service vide OB No.650 dated 30.5.2022 issued by Respondent No.3/DPO Bannu. However, the issue with regard to claim of arrear pay and allowances (Back Benefits) required to be paid to the petitioner as per this Hon'ble Tribunal orders from the date of his dismissal has not yet been implemented.
5. That the petitioner also filed an application to the Respondents for implementation of the judgment in its true letter and spirit but the Respondents are reluctant to take any action regarding payment of arrears of pay and allowances to the petitioner.

(Copy of application dated 22.7.2022 is attached as Annex-C)

6. That the inaction and not fulfilling the orders of this Hon'ble Tribunal is totally illegal and amounts to disobedience and contempt of this Hon'ble Tribunal.
7. That the judgment dated 08.10.2021 has attained finality, therefore, the Respondents are legally bound to implement orders of this tribunal with regard to arrear pay and allowance (Back Benefit) as per this Hon'ble Tribunal orders.
8. That the petitioner is having no other remedy but to file this execution petition.

It is, therefore, most humbly prayed that the Respondents may be directed to implement the judgment dated 08.10.2021 in its letter

and spirit. Any other remedy which this Hon'ble Tribunal deems fit and appropriate under the circumstances of the case may also be awarded in favour of the petitioner

Sadiq Anwar
Petitioner/Appellant

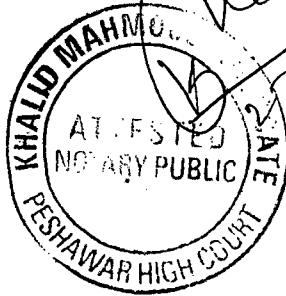
Through

PESHAWAR
27.09.2022

Abdul Hameed
(ABDUL HAMEED)
Advocate Supreme Court

AFFIDAVIT:

I, Sadiq Anwar, Constable No.422/FC, police Lines Bannu, do hereby declare & affirm on oath that the contents of accompanied execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon,ble Tribunal.



Sadiq Anwar
Deponent

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Page 1 of 12

Annex: "A"



**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 989 /2019

1. Saddiq Anwar (Ex-Constable Belt No. 12) s/o. Gula Nazif Khan R/O Yark Khel, Beri Khel, Tehsil & District Bannu.

APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1071

Dated 29/7/2019

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Bannu Region, Bannu
3. The District Police Officer, District Bannu.

RESPONDENTS


Filed to-day

Registrar

29/7/19

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 21-01-2015
PASSED BY THE DISTRICT
POLICE, OFFICER, BANNU
(RESPONDENT NO.3) WHEREBY THE
APPELLANT WAS AWARDED MAJOR
PENALTY OF DISMISSAL
FROM SERVICE WITH
RETROSPECTIVE EFFECT FROM
THE DATE OF OCCURRENCE i.e.
08-09-2014 AGAINST WHICH A
DEPARTMENTAL APPEAL WAS**

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 989/2019

Date of Institution ... 29.07.2019

Date of Decision ... 08.10.2021



Sadiq Anwar (Ex-Constable No. 12) S/O Gul Nazif Khan R/O Yark Khel, Beri Khel, Tehsil and District Bannu. ... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and two others. ... (Respondents)

Present.

Mr. Abdul Hameed,
Advocate.

... For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General

... For respondents.

MR AHMAD SULTAN TAREEN
MR. MIAN MUHAMMAD,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through the appeal at hand under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 21.01.2015, passed by respondent No. 3, whereby the appellant was awarded major penalty of dismissal from service and against the impugned order, his departmental appeal remained un-responded.

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2. Brief facts of the case as averred in the memo of appeal are that the appellant joined service in the Police Department as constable on 15.07.2007. During service, he was involved in a criminal case u/s 302/324/34 PPC vide FIR No. 554 dated 08.09.2014 P.S Mandan, District Bannu. The appellant was served with charge sheet on the basis of criminal case described above and was placed under suspension. The appellant submitted reply to the charge sheet and clarified his position that he was falsely roped in the criminal case on account of his previous blood feud with his rival group. An enquiry was conducted at the time when the appellant was in judicial lockup. After completion of the enquiry, the appellant was served with a show cause notice but without providing copy of enquiry report. The appellant submitted reply to the show cause notice and took the same stance as enumerated in reply to the charge sheet. On the other hand, investigation was completed and challan was submitted before the competent court of law for the trial and ultimately, the Hon'ble Additional Sessions Judge-III Bannu vide judgment dated 28.09.2017 convicted the appellant and sentenced to life imprisonment besides other punishment. Feeling aggrieved, the appellant invoked the jurisdiction of Hon'ble Peshawar High Court Bannu Bench by filing Criminal Appeal No. 213-B/2017. The Hon'ble High Court vide judgment dated 02.04.2019 accepted the said appeal, conviction and sentence rendered by the learned Trial Court vide judgment dated 28.09.2017 was set aside and the appellant was ordered to be acquitted of the charges and released him forthwith. After release from jail, the appellant approached the office of respondent No. 3 on 10.04.2019 so as to know about the fate of departmental proceedings against him, where he was informed that the Competent Authority vide order dated 21.01.2015 awarded him major penalty of dismissal from service from the date of occurrence i.e

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ATTESTED
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JUNIOR
Magistrate
Bannu

08.09.2014 and as such he was provided a copy of impugned order at his request. The appellant being dissatisfied with the same, filed departmental appeal on 16.04.2019 to the Regional Police Officer, Bannu Region Bannu (respondent No. 2) which elicited no response within the statutory period, hence the appeal at hand filed before this Tribunal on 29.07.2019.

3. The appeal was admitted for regular hearing on 17.09.2019 and notices were issued to the respondents. The respondents have furnished reply/comments on 19.12.2019, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. Arguments heard and record perused.

5. It is a matter of fact that the appellant was proceeded against under E&D Rules due to his involvement in a criminal case discussed above. The respondents in their reply to Para-4 of the Memorandum of appeal asserted that after commission of offence, the appellant due to his having been directly charged in the case was issued the proper charge sheet with statement of allegations with appointment of DSP HQ Bannu as enquiry officer. He conducted departmental enquiry and on its conclusion, recommended that the enquiry papers be kept (pending) till decision of the court. Later on, the enquiry officer issued continuation finding report dated 22.12.2014 and declared the appellant as guilty. Upon recommendations of the enquiry officer, the competent authority issued final show cause notice to the appellant but he i.e. the appellant failed to prove his innocence. Consequently, respondent No. 3 awarded major punishment of dismissal from service from the date of occurrence i.e. 08.04.2014. The copy of the charge sheet/statement of

Signature

ATTESTED
 EXAMINER
 Khayrabad
 Service Tribunal
 Bannu

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allegations, first and second findings of the enquiry officer i.e. DSP Headquarters Bannu, final show cause notice and impugned order as annexed with the reply/comments have been perused. It is an admitted position on behalf of respondents in their reply as discussed before, that the enquiry officer recommended for keeping the enquiry papers (pending) till decision of the criminal case. However, for no obvious reason, he vide correspondence No. 944/HQ dated 22.12.2014 submitted additional findings against the appellant. The enquiry officer thereby submitted that he re-summoned enquiry officer ASI Mir Daraz of Police Station Mandan. He stated in his statement/cross-examination that according to the report of the complainant and after conducting the investigation of case vide FIR No. 554 dated 08.09.2014 under Section 302/334/34 PPC of P.S Mandan, the accused official Sadiq Anwar No. 12 is guilty. In the final show cause notice served upon the appellant in pursuance to the enquiry conducted by DSP HQ, Bannu, the competent authority described the misconduct as that he (appellant) had really committed criminal offence and as a result of which a proper case vide FIR No. 554 ibid was registered. So the competent authority tentatively decided to impose upon him one or more punishments including dismissal as specified in the rules. Thereafter, the impugned order was passed whereby the major punishment of dismissal from service was imposed upon the appellant. The proceedings as discussed before are tantamount to pre-judging of the guilt of the appellant before his judicial prosecution. The proceedings conducted against the appellant before conclusion of the trial are not in conformity with Rule 16.2 of Police Rules, 1934. The said rule only provided for suspension of a police officer charged in a criminal offence. Rule 16.2(2) of said rule because of its relevancy is reproduced below:-

Sadiq Anwar

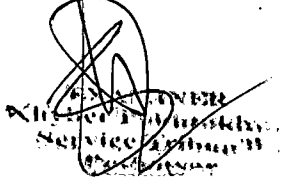
TESTED
[Signature]
JUDGE
Service Tribunal
Bannu

"An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal Court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure, fails to appear within the statutory period of thirty days, may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by Rule 16.1.



6. If taken in light of the above provision of Rule 16.2(2), the recommendations of the enquiry officer in the first enquiry report was consistant with this provision of the rules. However, the enquiry officer for the reason best known to him submitted additional findings which resulted into dismissal of the appellant from service. Rule 16.2(2) as copied above provides that the final departmental order shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filling an appeal has lapsed without appellate or revisionary proceedings having been instituted. Obviously, the said rule was not followed in case of the appellant and he was dismissed from service pending trial of the criminal case against him. It is an admitted fact that the appellant was convicted at the trial but the judgment of

ATTESTED



Director of Police
Service Bureau

The conviction was set aside by the Hon'ble Peshawar High Court Bannu Bench
 judgment dated 02.04.2019 passed in criminal appeal No. 213-B of 2017.
 Consequently, the appellant was ordered to be acquitted of the charges. With
 this position, the appellant is entitled for reinstatement into service when the
 charge of offence resulting into criminal trial is no more in field.

7. For what has gone above, the appeal at hand is accepted. Consequently,
 the impugned order is set aside and the appellant is reinstated into service
 from the date of his dismissal. As far as back benefits are concerned, the
 appellant is required to be treated in accordance with Rule 16.2(2) read with
 Rule 16.19 and 16.20 of the Police Rules, 1934. Therefore, the period during
 which he remained out of service from the date of his involvement in the
 criminal case till his conviction at the trial shall be treated as the period under
 suspension and he shall be entitled for grant of the arrears of subsistence
 allowance as per rules. The period of detention of the appellant in prison as
 convict and the subsequent period after his acquittal shall be treated as leave
 kind due. Parties are left to bear their own costs. File be consigned to the
 record room.

[Signature]

(MIAN MUHAMMAD)
 Member(E)

ANNOUNCED
 08.10.2021

[Signature]
 (AHMAD SULTAN TAREEN)
 Chairman

Date of Presentation of Application 26-9-22
 Number of Words 2800
 Copying Fee 30/-
 Stamp 4/-
 Total 34/-
 Date of Completion of Copy 26-9-22
 Date of Delivery of Copy 26-9-22

Continued to be true copy
[Signature]
 MEMBER
 Peshawar
 Service Tribunal



Annex B

MINUTES OF THE SCRUTINY COMMITTEE MEETING.
(AGENDA ITEM NO. 35)

11

SUBJECT: SERVICE APPEAL NO. 989/2019 SADIO ANWAR VERSUS INSPECTOR GENERAL OF POLICE, KHYBER PAKHTUNKHWA AND OTHERS.

A meeting of the Scrutiny Committee was held on 30.03.2022 at 11:00 A.M. in the office of Secretary, Law Parliamentary Affairs & Human Rights Department under his Chairmanship to determine the fitness of the subject case for filing of Appeal/CPLA in the Supreme Court of Pakistan. Advocate-on-Record (Mr. Mian Saad Ullah Jandoli) represented the Advocate General, Khyber Pakhtunkhwa.

2. The representatives of Home Department Mr. Wilayat Khan, SO (Lit-I) alongwith Mr. Mir Faraz Khan, DSP Legal, Police apprised the Committee about the background of the case and stated that the Appellant filed the subject Service Appeal against the order dated: 21.01.2015 whereby the Appellant was awarded major penalty of dismissal from service and also impugned whereby his Departmental Appeal remained un-responded. The Khyber Pakhtunkhwa Service Tribunal vide order dated: 08.10.2021 accepted the subject Service Appeal, set aside the impugned order and reinstated the Appellant into service from the date of his dismissal and held that "as far as back benefits are concerned, the Appellant was required to be treated in accordance with rule 16.2 (2) readwith rule 16.19 and 16.20 of the Police Rules, 1934. Therefore, the period during which he remained out of service from the date of his involvement in the criminal case till his conviction at the trial shall be treated as the period under suspension and he shall be entitled for grant of the arrears of subsistence allowance as per rules. The period of detention of the Appellant in prison as convict and the subsequent period after his acquittal shall be treated as leave and due. The Scrutiny Committee declared the subject case unfit on the following grounds:

GROUND/DISCUSSIONS

- i. Scrutiny Committee perused the record of the case and the impugned Judgment which revealed that the Appellant was Departmentally proceeded against on the basis of his involvement in case FIR No: 554, dated: 08.09.2014 under section 302/324/34 PPC PS, Mandan, District Bannu. Perusal of the record further revealed that the Appellant was convicted by the Additional Sessions Judge, Bannu for life imprisonment in the criminal case ibid vide order dated: 28.09.2017 but in appeal, the Hon'ble High Court vide order dated: 02.04.2019 acquitted the Appellant in the criminal case ibid.
- ii. Perusal of the record revealed that the charges against the Appellant in Departmental and criminal proceedings were the same as the Appellant was proceeded against on the basis of his involvement in the criminal case and the Appellant was acquitted by the Hon'ble High Court vide order dated: 02.04.2019 in the criminal case on the basis of which the Appellant was Departmentally proceeded and was dismissed from service. The Scrutiny Committee held that no plausible grounds existed against which CPLA in the upper forum could be filed.

ADVICE:

3. Hence in view of above, it was decided with consensus by the Scrutiny Committee that the subject case was not a fit case for filing of Appeal/CPLA in the Supreme Court of Pakistan.

(TAHIR IQBAL KHATTAK)
COMMISSIONER

ADVOCATE GENERAL

خدمت جناب ڈسٹرکٹ پولیس آفیسر صلح بنوں

Annex: C

12

عنوان:- درخواست برائے بحالی (Back Benefits)

جناب عالی!

مودبانہ گزارش ہے کہ سائل محکمہ پولیس سے ڈسمس ہو چکا تھا۔ جس کے خلاف سائل نے باقاعدہ ڈپارٹمنٹ کو اپیل کرائی بعد از اپیل سائل نے کے پی سروس ٹریبونل، پشاور عدالت میں سروس اپیل نمبر 989/2019 دائر کی۔ جس کے خلاف ڈپارٹمنٹ کمشنس جمع کئے لیکن عدالت کے پی سروس ٹریبونل، پشاور نے میرٹ پر فیصلہ کر کے سائل کے حق میں فیصلہ کیا۔ اور All Back Benefits کے ساتھ مورخہ: 08.10.2021 سے بحال کرنے کا حکم کیا گیا۔ (آرڈر شیٹ کاپی ہمراہ لف ہے۔) بالا فیصلے کے خلاف ڈپارٹمنٹ نے CPLA کے لئے لاء ڈپارٹمنٹ کو لیٹر کیا۔ جس کیلئے باقاعدہ کمیٹی مقرر ہوئی۔ لیکن کمیٹی نے سائل کا فیصلہ CPLA کیلئے Un-fit قرار دیا گیا اور سائل کے حق میں ہوم ڈسٹرکٹ کو عدالتی فیصلے کی روشنی میں بحال کرنے پر فوری تعمیل کرنے کیلئے لیٹر کیا۔ (لیٹر: LAW Deptt: ہمراہ لف ہے۔) جس پر محکمہ نے سائل کا Conditionally آرڈر With Draw کر کے مورخہ: 08.05.2022 کو Permanent آرڈر کئے گئے۔ (آرڈر کاپی ہمراہ لف ہے۔) لیکن Back Benefits کے بارے میں سائل کو کوئی مراعات ابھی تک نہیں دیئے گئے۔

لہذا بذریعہ درخواست استدعا ہے کہ سائل کو عدالتی فیصلے کی روشنی میں تمام مراعات (All Back Benefits) دیئے جانے کا حکم صادر فرمائیں۔

عین نوازش ہوگی۔




مورخہ: 22.07.2022

العارض


ATTESTED

ADVOCATE

سائل صادق انور خان 422/FC متعینہ پولیس لائن، بنوں۔

قیمت 50 روپے	41268			
ایڈوکیٹ: عبدالحمید (ASC)		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: BC-10-7605				
رابطہ نمبر: 0343-9025029				

بعدالت جناب: خیبر پختونخواہ سروسز سٹراٹھیٹل پشاور

منجانب: مسائل	دعوی: Execution Petition
صاحب القاضی: طارق انجمن	علت نمبر: _____
	سورہ: 27-09-2022
حکومت خیبر پختونخواہ	جرم: _____
	تھانہ: _____

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کا ردائی متعلقہ آن مقام کے قرائن کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز کوہیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعوی اقبال دعوی 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 کر کے 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 قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو کوئی جملہ مذکورہ با اختیار است حاصل ہوں گے اور اس کا ساختہ پروا ختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب یا ہندختہ ہوں گے کہ پیروی مذکورہ کریں، لہذا ادکالت نامہ لکھ دیتا تاکہ سندر ہے

المقوم: 

پشاور کے لیے منظور ہے

Attested & accepted
Abdul
Advocate Supreme Court of Pakistan
BC-10-7605

Cell No 0343-9025029
Tel PTL No 091-5823468
CNIC No 17301-1537861-5

NIC No 111017783852-3

رابطہ نمبر: 422-7783852-3

نوٹ: اس دکالت نامہ کی فونڈ کاپی ناقابل قبول ہوگی۔