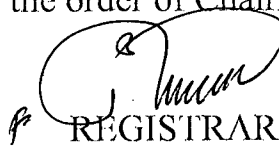




Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1462 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/10/2022	<p>The appeal of Mr. Salabat Khan presented today by Mr. Hassnain Tariq Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>19-10-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>
19.10.2022		Nemo for appellant.
<p><i>Noted for counsels</i></p> <p> <u>31/10/22</u></p>		<p>Notice be issued to appellant/counsel for 24.11.2022 for preliminary hearing before S.B.</p> <p> (Rozina Rehman) Member (J)</p>

BEFORE THE CHIEF JUSTICE IRMAN KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Service Appeal No. 1462 /2022

Salabat KhanAppellant

Versus

Govt. of Khyber Pakhtunkhwa through Chief Secy: and others
..... Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal		1-5
2	Copies of CNIC	A	6
3	Copy of appointment order.	B	7
4	Copy of letter	C	8
5	Copies of relevant documents.	D	9
6	Copy of notification dt.03.11.2017	E	10
7	Copy of certificate	F	11
8	Copy of application	G	12
9	Copy of removal order/ notification	H	13
10	Copy of appeal	I	14-15
16	Wakalatnama.		16

Appellant

Through

Hasnain Tariq

&

Abrar-ul-Haq

Advocates High Court

Dated: 11.10.2022

(1)

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

Service Appeal No. 1462 /2022

Salabat Khan S/o Noor Muhammad Khan
R/o Sada Khel Wazir P/o Domel, District Bannu.

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary Higher Education, Civil Secretariat, Peshawar.
3. Director Higher Education, Peshawar.

.....Respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER/NOTIFICATION NO.SO(C-
II)/HED/12-6/2022/SALABAT KHAN DATED 17th
MAY, 2022 BY THE RESPONDENT NO. 01,
WHEREBY THE APPELLANT HAS BEEN
REMOVED FROM THE SERVICE/POST OF
LECTURER (BPS-17).**

PRAYER IN APPEAL

ON ACCEPTANCE OF INSTANT APPEAL THE
IMPUGNED ORDER/NOTIFICATION NO.SO(C-
II)/HED/12-6/2022/SALABAT KHAN DATED 17th
MAY, 2022 OF THE RESPONDENTS MAY

2

KINDLY BE SET ASIDE AND THE APPELLANT
MAY PLEASE BE RE-INSTATED WITH ALL
BACK BENEFITS/CONSEQUENTIAL RELIEF.

Respectfully Sheweth :-

Brief Facts:

The brief facts of the case giving rise to the instant Appeal are as under-

1. That the appellant is a loyal Citizen of Pakistan and permanent resident of District Bannu.
2. That the appellant was appointed through Notification No.SO(Edu:SSD)/!-/Apptt:Lect:7633-91 dated 06/12/2012 as lecturer (BPS-17) Computer Science in Government Degree College, Mir Ali North Waziristan. (Copies of CNIC & appointment order attached as Annex "A & B")
3. That the Appellant appeared in National Testing Service (NTS) test and after qualifying it, the Government of Pakistan Ministry of Inter Provincial Coordination (IPC Division) vide letter dated 10th August 2016 informed the Appellant of his selection by the Government of China under Cultural Exchange Program for the Academic year 2016 for Ph.D. (Copy of the letter is attached as Annex "C")
4. That Appellant submitted an application to the Respondent No.02 for grant of study leave for pursuing Ph.D studies at Beijing Institute of Technology China, under Chinese Government Scholarship Program. (Copy alongwith relevant documents are attached as Annexure "D/~~_____~~ ")
5. That Respondent No. 02 through Notification No. 2046-51 dated 03/11/2017 accorded 1413 days study leave for pursuing Ph.D studies at Beijing Institute of Technology China on half average pay w.e.f 01/09/2016 to 15/07/2020 in favour of appellant. (Copy of the notification dated 03/11/2017 is attached as Annexure "E")

- 6. That the Appellant successfully completed Ph.D course in the July 2020, but in December 2019 the Coronavirus disease-19 (COVID-19), originated at Wuhan City of China which was rapidly widespread almost every country across the world and has become pandemic, which suffered all the world's business including civil aviation (international flights).
- 7. That the outbreak of COVID-19 has affected global mobility through various travel disruptions and restrictions hence, due to non-availability of international flights, the Appellant also stuck into China.
- 8. That here it is pertinent to mention that the Appellant informed the Respondents/Department about his position and non-availability of flights, even the Beijing Institute of Technology issued a certificate on 07/07/2020. **(Copy is attached as Annex "F")**
- 9. That as mentioned above the appellant could not report on the due date i.e 16th of July 2020 due to aforementioned reasons but for that the appellant informed the Respondents of all the situations well within time. Here it is worth to mention that the Appellant submitted an application to the Principal of Government Degree College, Mir Ali, District North Waziristan and requested for adjustment. **(Copy is attached as Annex "G")**
- 10. That the Respondents without affording opportunity of hearing to the Appellant awarded major penalty of "Removal from service" vide Notification No.SO(C-II)/HED/12-6/2022/Salabat-Khan Dated 17th May, 2022 from service w.e.f 16/07/2020. **(Copy of the Removal order/notification is attached as Annex "H")**
- 11. That aggrieved from the Removal from Service order/notification dated 17/05/2022 the Appellant submitted an appeal to the Respondent No. 01. **(Copy of the Appeal is attached as Annex "I")**
- 12. That the appellant is seriously aggrieved from the order of Removal from service, hence having no other remedy, preferred the instant appeal on the following grounds inter-alia;

GRUNDS:-

4

- A. That the order dated 17/05/2022 passed by the Respondent No. 01 of Removal from service of the appellant is illegal, against law, facts and against the record, hence, liable to be set aside.
- B. That the appellant has not been treated in accordance with law as well as fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973.
- C. That the appellant successfully completed his Ph.D from a renowned international university of Beijing, China and now the appellant want to teach and deliver all his knowledge and experience to the students of a backward area.
- D. That here it is worth to mention that the Appellant time and again communicated the department regarding his inability of arrival on time due to unavoidable and pandemic situation but the Respondent turned deaf ears.
- E. That the Respondents should afford an opportunity to the appellant for exploring and transporting his high education experience.
- F. That neither the appellant was afforded opportunity of personal hearing nor the Respondents conducted fair inquiry. All the procedure adopted by the Respondents was one sided and the appellant was neither present nor heard by the Respondents.
- G. That no final show cause notice has been issued by the Respondents and no proper procedure was adopted. Similarly no right of defense has been given to the appellant.
- H. That here it is worth to mention that the appellant was not given any opportunity to confront with any material of purported inquiry.
- I. That the act of the respondents is clearly in violation of the Article 10-A as well as Article 25 of the Constitution of Pakistan, 1973.
- J. That the appellant seeks the permission of this Hon'ble Court to advance other material grounds at the time of arguments.

5

It is, therefore, humbly prayed that on acceptance of instant appeal, the impugned order dated 17/05/2022 of the Respondent No.01 may kindly be set aside and the appellant may please be Re-instated on his post with all back benefits/consequential relief.

Any other relief deem appropriate in the matter if not specifically asked for, may also be extended to the appellant for the best interest of justice.

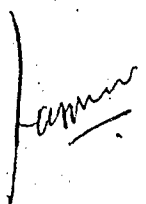
Petitioner
through

Hassnain Tariq

&



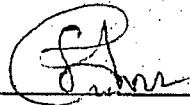
Abrar ul Haq
Advocates High Court,
Peshawar



Affidavit:

Stated upon oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief.

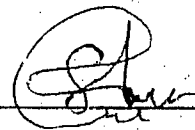
Deponent



Certificate:-

Certified that no such appeal on the same subject matter has earlier been filed before this Hon'ble Court.

Deponent





Annex A (6)



PAKISTAN National Identity Card

ISLAMIC REPUBLIC OF PAKISTAN

Name
Salabat Khan

سلاہت خان

Father Name
Noor Muhammad Khan

نور محمد خان

Gender Country of Stay
M Pakistan

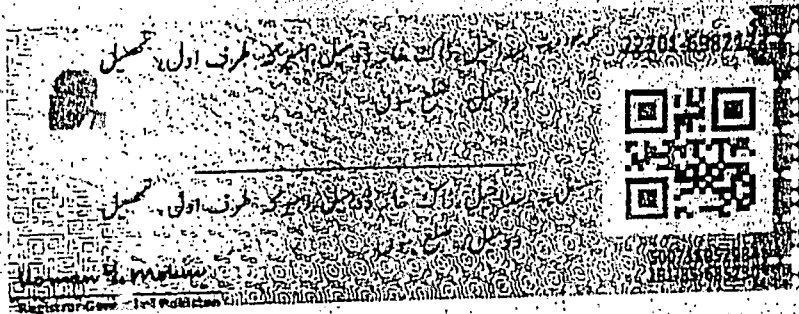
Identity Number Date of Birth
22201-6982123-3 03.10.1985

Date of Issue Date of Expiry
04.02.2016 04.02.2026



Holder's Signature

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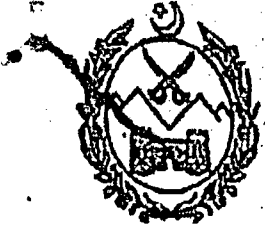


گمشدہ کارڈ ملنے پر قریبی لیو پکس میں ڈالی دیں

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ATTESTED

To be used only
As per...



FATA SECRETARIAT Annex B
Social Sectors Department
Warsak Road Peshawar

Dated Peshawar the 06/12/2012

Notification

No.SO/Edu:SSD/1-1/Appt:Lect:7683-91 Consequent upon the recommendations of Khyber Pakhtunkhwa Public Service Commission, the Competent Authority (Chief Secretary Khyber Pakhtunkhwa) is pleased to appoint the following (Male/Female) candidates as Lecturer/Librarian in Higher Education, Archives & Libraries Department, Khyber Pakhtunkhwa in BS-17 (16000-1200-40000) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government subject to the conditions inter-alia specified at Para-2 and posted them in the Colleges mentioned against their names below.

S#	Name and Father's Name	Subject	Posted at	Remarks
1	Mst. Simj Begum D/O Rajab Ali <u>Address</u> TMO Hostel Room No. 021 Lady Readiing Hospital Peshawar.	Pak Study	GGDC Parachinar Kurram Agency	Already occupied post.
2	Mst. Shabana Begum D/O Bakht Ali Shah <u>Address</u> Village Naqai Section Hallmzai Sub Section Ibrahim Kor, Mohmand Agency	Physics	GGDC Jamrud Khyber Agency	Already occupied post.
3	Mst. Abida Hussain D/O Kifayat Hussain <u>Address</u> House of Kifayat Hussain Near NBP Parachinar Kurram Agency.	Librarian	GGDC Sadda Kurram Agency	Against Vacant post.
4	Ms. Najma Afridi D/O Ajmaeen Khan Afridi <u>Address</u> House No. 181 Sector No. 4 Hostel Road K.D.A Kohat.	Chemistry	GGDC Dara Adam Khel, FR Kohat.	Against vacant post.
5	Mr. Sabir Ullah S/O Zaver Din <u>Address</u> Village Shiekhan Bari Rand P/O Mandani District Charsadda.	Computer Science	GDC Jamrud Khyber Agency	Against vacant post.
6	Mr. Salabat Khan S/O Noor Muhammad <u>Address</u> Sada. Khel Wazir P/O Domel District Bannu.	Computer Science	GDC Mir Ali NWA	Against vacant post.
7	Mr. Muhammad Rafiq S/O Ali Haider <u>Address</u> Village Hameed Khan Qilla P/O Ghullana Tehsil Haleemzai Mohmand Agency.	Computer Science	GDC Lakaro Mohmand Agency	Already occupied.
8	Mr. Mumtaz Khan S/O Said Zahir Shah <u>Address</u> Govt. College Management Sciences Khar Bajaur Agency.	Computer Science	GDC Nawagai Bajaur Agency	Already occupied
9	Mr. Khalid Khan S/O Wallayat Khan <u>Address</u> Khysoor Khel (Patal Khel) P/O Domel District Bannu.	Computer Science	GDC Ara Khel FR Kohat	Vice Amjid Ali Khan. Adhoc lecturer whose services shall be terminated.

ATTESTED

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(to be true only)
Advocate



Section (Foreign Scholar-I)
Shahood-e-Millat Secretariat
China Chowk, Islamabad
Ph:051-9204225

NO.F.1-5/21016
GOVERNMENT OF PAKISTAN
MINISTRY OF INTER PROVINCIAL COORDINATION
(IPC Division)
○○○

Annex C

8

Islamabad, 10th August, 2016

SUBJECT: - SELECTION BY THE GOVERNMENT OF CHINA UNDER CULTURAL EXCHANGE PROGRAMME FOR THE ACADEMIC YEAR 2016.

I am directed to inform that the Government of China has finally selected you for Master / Ph.D studies from Chinese Universities / institutions mentioned in admission notice (original letter alongwith visa application is enclosed) under bilateral cultural exchange programme for the academic year 2016.

2. You will join the university / institution accordingly to deadline as given in the admission notice. The Government of China will pay monthly stipend, in addition to free accommodation free medical care and other facilities.

3. A copy of specimen deed of agreement is enclosed which may be typed on judicial stamp paper (not below Rs.100/-) and return to this Ministry after attestation by the First Class Judicial Magistrate ONLY, alongwith attested photocopies of CNIC of scholar / grantor / witness.

4. The above mentioned documents should be provided within one week from the date of issuance of this letter by urgent mail service or by hand for further necessary action and issuance of NOC.

Ali Nawaz

(Ali Nawaz)
Senior Research Officer

i. Mr./Ms. Sadqat Khan
Islamabad

ATTESTED

10-10-2016
Ali Nawaz

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Annex 'D'



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

No SO(FR)/FD/5-13/2015-16/3331
Dated Peshawar, the 02-11-2017

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Higher Education, Archives & Libraries Department.

Subject: - APPLICATION FOR GRANT OF STUDY LEAVE

Dear Sir,

1. I am directed to refer to this Department letter of even number dated 19-09-2017 and your Department letter No. SO(C-II)/HED/12-14/2012/Salabat/CS/3703 dated 22-08-2017 on the subject noted above and to state that Finance Department agrees to grant study leave in r/o Mr. Salabat Khan, Lecturer in Computer Science (BPS-17) Govt. Degree College Mirali, North Waziristan Agency for pursuing Ph.D, under audit ruling FR-84 readwith appendix 9-1(A) of FR-1 & SR-I & II, subject to the condition that internal/ local arrangement will be made by the Administrative department and no contract employee will be appointed during his study period.

2. Audit copies may be prepared and sent to this department for authentication.

Yours faithfully,

SECTION OFFICER (FR)

ATTESTED
(to be filled copy)
Advocate



GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT

Dated Peshawar the November 03, 2017.

NOTIFICATION / 2046 - 51.

No. SO(C-II)IED/12-06/2016. In consultation with Finance Department, sanction is hereby accorded to the grant of 1413 days Study Leave on half average pay w.e.f. 01.09.2016 to 15.07.2020 in favor of Mr. Salabat Khan, Lecturer in Computer Science (BS-17) Govt. Degree College Mir Ali, North Waziristan Agency for pursuing Ph.D Studies at Beijing Institute of Technology China, under Chinese Govt. Scholarship Program, in terms of provision of FR 84 read with Appendix 9-I A of FR & SR Vol-I&II. subject to the condition that internal / local arrangement will be made by Directorate of Higher Education Khyber Pakhtunkhwa and no contract employee will be appointed during the leave period of the applicant concerned.

2. On expiry of leave, the officer is likely to return to the same post and station.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION DEPARTMENT.

Ends: No. SO(FR)/FD/5-13/2015-16/3331

Dated: 02.11.2017.

Copy for information and further necessary action is forwarded to Agency Accounts Officer, Miran Shah North Waziristan Agency.

SECTION OFFICER (FR)
GOVT. OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

No. SO(C-II)IED/12-06/2016.

Dated: 03.11.2017

Copy forwarded to the:-

1. Secretary, Social Sectors, FATA Secretariat, Warsak Road Peshawar.
2. Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
3. Director, Education FATA, FATA Secretariat, Warsak Road Peshawar w/r to his letter No. FS/E/100-96 (Vol-12)/11377-78 dated 30.08.2016.
4. Principal, Govt. Degree College Mir Ali, NWA.
5. Deputy Director, HEMIS Cell, Higher Education Department, Peshawar.
6. Section Officer (FR) Finance Department w/r to his letter No. SO (FR)/FD/5-13/2015-16/3331 dated 02.11.2017.
7. Officer concerned

SECTION OFFICER (COLLEGES-II)

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Annex F

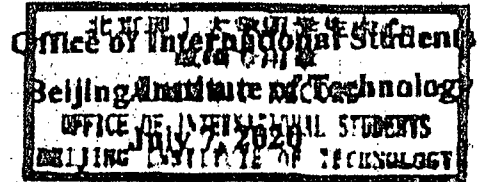
11



北京理工大学
BEIJING INSTITUTE OF TECHNOLOGY

Subject: Delay and stay on humanitarian basis due to pandemic

It is to certify that Mr. Salabat Khan, a doctoral candidate majoring in computer science and technology, School of Computer Science and Technology, Beijing Institute of Technology, passed the defense of his doctoral thesis on 2020/6/19, and was successfully awarded degree on 2020/7/7. Unfortunately, Mr. Salabat Khan's visa was extended on humanitarian basis till per flights availability caused by COVID-19 pandemic.



地址: 中国·北京海淀区中关村南大街5号
5 South, Zhongguancun Street, Haidian District, Beijing China

<http://www.bit.edu.cn>

邮政编码: 100081
Postcode: 100081

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[Signature]

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Annex

15/3

12

The Principal

Govt. Degree College Mir Ali NWTD.

SUBJECT:

ADJUSTMENT

R/Sir,

Reference Notification No. 2046-51 Dated: 03/11/2020
regarding sanction of 1413 days study leave (w.e.f 01-09-2016 to 15-07-2020) on half average pay
, it is stated that after completion of period I am bound to show my arrival report at the specific
time, but unfortunately because of the unavailability of flights from China to Pakistan due to covid-
19 I could not show my arrival well in time.

Now in this connection your authority is meekly requested to please further
Proceed as per rule.

Dated : 15/07/2020.

Your's Sincerely
Mr. Silabat Khan
Lecturer In C. Science
GDC Mir Ali NWTD

ATTACHED
15/07/2020
ADW



**GOVT. OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES &
LIBRARIES DEPARTMENT**

Dated Peshawar the 17th May, 2022

NOTIFICATION

No. SO(C-II)/HED/12-6/2022/Salabat Khan. WHEREAS Mr. Salabat Khan, Lecturer In Computer Science (BS-17), Govt. Degree College Mirali, North Waziristan remained absent from duty since 16.07.2020 till date.

2. **AND WHEREAS** absence notices were issued to him at his home address as well as published in leading newspapers with the direction to resume duty within 15 days, failing which ex-parte action under Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 will be initiated against him.

3. **AND WHEREAS** the accused Lecturer did not report for duty within stipulated time.

4. **NOW THEREFORE**, the Chief Secretary, Khyber Pakhtunkhwa in exercise of powers conferred upon him under Rule-9 of the Khyber Pakhtunkhwa Govt. Servants (Efficiency & Discipline) Rules, 2011, is pleased to impose the major penalty of "Removal from Service" upon Mr. Salabat Khan, Lecturer in Computer Science (BS-17), Govt. Degree College Mirali, North Waziristan with immediate effect. His absence from duty w.e.f 16.07.2020 till imposition of penalty shall be treated as unauthorized absence from duty.

-Sd-

**SECRETARY
HIGHER EDUCATION DEPARTMENT**

ENDST: NO. & DATE EVEN.

Copy forwarded to the:-

1. Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. Director-IT, HEMIS Cell, Higher Education Department.
3. Principal, Govt. Degree College Mirali, North Waziristan.
4. District Accounts Officer, North Waziristan.
5. PS to Secretary Higher Education Department.
6. Lecturer concerned.
7. Master File.

**(SAMEERA SABA)
SECTION OFFICER (COLLEGES-II)**

ATTENDED

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To
The Chief Secretary
Khyber Pakhtunkhwa
Civil Secretariat, Peshawar

Received

14/06/2022

Annex

14

14

SUBJECT: - DEPARTMENTAL APPEAL THROUGH PROPER CHANNEL

Respected Sir,

The Departmental appeal in hand is being made in pursuance of Notification No. SO(C-II)/HED/12-6/2022/Salabat Khan dated 17.05.2022 which needs to be look into by your good office for reasons stated hereinafter: -

- That the notification allowing, removal from service stands unwarranted, since neither any notice was served nor asked for verbally; enabling the applicant to resume his duties.
- That the question of not reporting lacks vigor for reasons stated hereinbefore, coupled with the factum of, not attending to the procedure under Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.
- It is important to note that; the applicant has earlier moved an application for grant of study leave, which was allowed vide Notification No. SO(FR)/FD/5-13/2015-16/3331 dated 02.11.2017 till completion of study period.

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14/06/2022

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- In the meanwhile; COVID-19 surfaced, which effected the globe by entirety especially the People's Republic of China; wherein the applicant was studying and delay occurred due to non-availability of flights on account of pandemic.
(Details enclosed)

- Moreso, upon arrival the Principal Government Degree College Mir Ali NWTD, was requested to adjust the applicant; which was taken otherwise and that too, to the discredit of the applicant.

Given the information placed; the impugned order; allowing removal of the applicant/appellant may please be set at naught in the interest of justice.

Yours Sincerely
Mr. Silabat Khan
Ex-Lecturer in C. Science
GDC Mir Ali NWTD

14-6-22

ACCEPTED

قیمت
50 روپے

11126



16

ایڈوکیٹ: _____

بار کونسل / ایسوسی ایشن نمبر: 11-1523

رابطہ نمبر: 03332922208

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: _____

KPK services Tribunal Peshawar

مخانب: امیر اسٹ	دعویٰ:
سر اسٹ خان	غلط نمبر:
بنام	مورخہ:
صدر صحت	جرم:
	تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام لیسٹر کیلئے حسین طاہر الاکبر امیر اسٹ 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 کرنے و تقرر ثالث و فیصلہ بر خلاف دینے جواب 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 قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ 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 کالت نامہ لکھو یا تاکہ سندر ہے

المرقوم: 11-1523

العبد _____

مقام _____ کے لیے منظور ہے۔

نوٹ: اس کالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔