


FORM OF ORDER SHEET

Court of _____

Case No. - 1705/2022


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 2 | 3 |
| 1- | 29/11/2022 | <p>The appeal of Mr. Abdul Wahid resubmitted today by Mr. Muhammad Adnan Sher Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p> |

The joint appeal of M/S Hayatullah, Abdul Wahid, Hassan Farid, Liaqat Ali Khan and Shah Zar Khan
filed today i.e. on 23.11.2022 is in complete on the following score which is returned to the counsel
for appellants for completion and resubmission within 15 days.

- 1 Memorandum of appeal may be got signed by the appellants.
- 2 Annexures of the appeal may be attested.
- 3 Appeal has not been flagged/marked with annexures marks.
- 4 Addresses of appellants are incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 5 Sub-rule- 2 of rule-3 of the appeal rules 1986 requires that every affected civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually.
- 6 Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted.

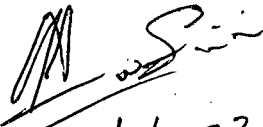
No. 3355 /S.T

Dt. 23/11/2022


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

M. Adnan Sher Adv. Pesh.

Resubmission needed be done.


29/11/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1705/2022

Abdul Wahid

VERSUS

Govt of KP & Others

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| 7. | | | |
| 10. | Court Fee/- | -- | -- |
| 11. | Wakalatnama | -- | 22 |

Dated: _____, 2022

Abdul Wahid
APPELLANT

Through

Muhammad Adnan Sher
MUHAMMAD ADNAN SHER
Advocate High Court, Peshawar

(13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 17052022

1. **Abdul Wahid**
R/o Chusmi, Tehsil Domail, District Bannu

VERSUS

1. **Government of Khyber Pakhtunkhwa**
Through Secretary Elementary & Secondary Education (KP)
Civil Secretariat, Peshawar
2. **Secretary Finance (KP)**
Civil Secretariat, Peshawar
3. **Director Elementary & Secondary Education (KP)**
Peshawar

.....RESPONDENTS

**APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 TO THE EFFECT THAT THE RESPONDENTS BE DIRECTED
TO TREAT THE APPELLANTS AT PAR WITH OTHER COLLEAGUES IN
THE LIGHT OF JUDGMENTS OF THIS TRIBUNAL S.A No. 1241/ 2011
BY GRANTING THEM RELIEF OF UPGRADATION FROM BPS-16 TO
BPS-17 WITH EFFECT FROM 01.10.2007 INSTEAD OF 20.01.2010 WITH
ALL CONSEQUENTIAL BENEFITS TILL DATE**

Respectfully Sheweth;

1. That the appellants are law abiding citizens of Pakistan and entitled to equal protection and enforcement of legal and fundamental rights.
2. That the appellants were appointed as SETs on regular basis however in the year 2007, the Government upgraded posts from BPS-16 to BPS-17 with effect from 01.10.2007 however the appellants and some of their other colleagues were upgraded from BPS-16 to BPS-17 *vide* Notification No. SO(PE)2-6/SET(B-16) Upgradation to B-17 dated 20.01.2010 with effect from 20.01.2010 instead of 01.10.2007. (Copy of the Notification dated 20.01.2010 is hereby annexed as Annexure "A").

3. That some of the colleagues being dissatisfied with their upgradation from 20.01.2010, approached this hon'ble tribunal for redressal of their grievances in Service Appeal No. 1241/2011 along with other connected Appeals and the same were disposed of by this hon'ble Tribunal *vide* judgment dated 05.11.2012. (Copy of the judgment dated 05.11.2012 is hereby annexed as Annexure "B").
4. That later on, the appellants came to know that in the light of judgment of this hon'ble Tribunal dated 05.11.2012, the respondent/ respondents concerned *vide* Notification No. SO (PE)E&SED/2-6/DPC Meeting/2019 dated 05.09.2019, given upgradation to the colleagues of the appellants from BPS-16 to BPS-17 with effect from 01.10.2007 instead of 20.01.2010. (Copy of the Notification dated 05.09.2019 is hereby annexed as Annexure "C").
5. That the appellants who stood at par with their colleagues and in the hope to be meted out same and equal treatment, moved an application to the respondent/ respondents concerned however one way or the other, their application was kept under the carpet without any decision till date. (Copy of the Application is hereby annexed as Annexure "D").
6. That the appellants being hopeless and disappointed by the non-serious approach of the respondent/ respondents concerned approached hon'ble High Court in writ jurisdiction for redressal of grievances and the hon'ble High Court *vide* judgment dated 18.10.2022 refused to exercise jurisdiction in the matter of upgradation and let the petitioners/ appellants to approach the competent forum. (Copy of the judgment dated 18.10.2022 is hereby annexed as Annexure "E").
7. That the appellants, being aggrieved by the action of the respondent/ respondents concerned by not treating them at par with their colleagues and having no other alternate remedy available, approach this hon'ble Tribunal in instant Service Appeal *inter alia* on the following grounds;

GROUND:

- A. That the action of the respondent/ respondents concerned for not treating the appellants with equality and at par with their colleagues who have been given upgradation from 01.10.2007 is absolutely illegal, unlawful, *void ab initio* and against the principles of natural justice.

- B. That the colleagues of the appellants were given upgradation in the light of judgment of this hon'ble Tribunal dated 05.11.2012 and therefore the appellants also deserve to be treated at par with their colleagues, hence requires interference by this hon'ble Tribunal.
- C. *Without prejudice to the above and in addition thereto*, it has been held in plethora of judgments of Apex Court and High Courts that the benefit of judgment is extended to those who were not party to litigation and in such cases even recourse through separate litigation is discouraged and therefore when the respondent/ respondents concerned have given benefit to the colleagues of the appellants in the light of judgment of this hon'ble Tribunal *vide* Notification dated 05.09.2019 the same benefit is to be given to the appellants too without compelling them to indulge in unnecessary litigation but even then ignoring the appellants at this stage by the respondent/ respondents concerned is a clear cut negation to the settled principles of law as set out by the hon'ble Apex Court and High Courts.
- D. *Without prejudice to the above and in addition thereto*, giving upgradation to the colleagues of the appellants from 01.10.2007 and extending all the benefits to be enjoyed by them but refusing the same to the appellants is one of the glaring examples of violation of fundamental rights of the appellants as contained in Article 27 of the Constitution of 1973 by the respondent/ respondents concerned.
- E. *Without prejudice to the above and in addition thereto*, since the case of the present appellants is based on the principle of consistency and the same relief is claimed by the appellants as claimed by their colleagues in Service Appeal No. 1241/2011 which relief was granted by the respondent/ respondents concerned *vide* Notification dated 05.09.2019, therefore no limitation would be attracted to the instant case of the appellants and the respondent/ respondents are bound to consider and grant the same relief to the appellants as well.
- F. *Without prejudice to the above and in addition thereto*, the Constitution of Islamic Republic of Pakistan, 1973 clearly commends that all citizens to be treated in accordance with law and all are equal before law however the respondent/ respondents concerned, in sheer violation of law, are blatantly refusing the appellants their due rights by indulging them into unwanted litigation and technicalities of law which is not the mandate of law.

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G. Any other ground that may be raised at the time of hearing of this petition.

It is, therefore, respectfully prayed that on acceptance of instant Service Appeal, this hon'ble Tribunal may be pleased to

- a. *Direct* the respondent/ respondents concerned to consider and treat the appellants at par with their colleagues by giving them upgradation from BPS-16 to BPS-17 with effect from 01.10.2007 as given to Rehmatullah and other colleagues *vide* Notification dated 05.09.2019 in the light of judgment of this hon'ble Tribunal dated 5.11.2012
- b. Give any other relief in the case as deemed fit and proper by this hon'ble court.

Abdul *et al*

Dated: _____, 2022

APPELLANTS

Through

Muhammad Adnan Sher
MUHAMMAD ADNAN SHER
Advocate High Court, Peshawar

Certificate: It is certified that no such Service Appeal has been moved before this hon'ble Tribunal.

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2022

Abdul Wahid

VERSUS

Govt of KP & Others

AFFIDAVIT

I, **Abdul Wahid**, R/o Chusmi, Post Office & Tehsil Domail, District Bannu

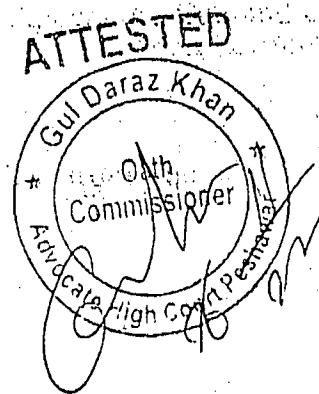
do hereby declare and affirm on oath;

1. That the contents of this Service Appeal are true and correct to the best of my knowledge and belief &
2. That nothing has been concealed from the august court, which it is necessary to disclose.

Identified by:

Abdul Wahid
DEPONENT

Muhammad Adnan Sher
MUHAMMAD ADNAN SHER
Advocate High Court, Peshawar



Annexure - J

3/1

ANNEX "A"



GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Date: 20-01-2010

NOTIFICATION

No. SO(PE)2-6/SET(B-16) Upgradation to B-17. The Competent Authority on the recommendation of Departmental Promotion Committee is pleased to allow up gradation from B-16 to B-17 (Personal) to the following 168 SETs Male: 20 SETs Female and 02 SETs (Technical) Male with immediate effect subject to the condition that the posts of SETs shall be downgraded from B-17 to B-16 as and when vacated by the incumbents.

160 MALE SETs

| S.No. | Seniority List No. | Name of Officer & Present Place of Posting |
|-------|--------------------|----------------------------------------------------------|
| 1. | 050 | Ismail Khan, SET GMS Goon, Orakzai Agency |
| 2. | 990 | Jamal Ahmad Mirza SET GHS No. 5, D.I. Khan |
| 3. | 1046 | Ijaz Ahmad SET GHS Ghori Habibullah Mansohra |
| 4. | 1185-A | Mohammad Yaqoob, SET GMS, Din Mohammad, FR Tank. |
| 5. | 1185-B | Nasrullah Jan, SET GHS, Bagu Kohat, Lakki |
| 6. | 1204-A | Hayat Ullah, SET GHS Kohun, Ali Kohat FR Bannu. |
| 7. | 1207 | Muhammad, Nuraigzeb, SET GHS Shahgi Mansohra. |
| 8. | 1363 | Hamza Gul SET GHS No. 3 Kohat |
| 9. | 1474 | Ahmad -ud- Din SET GHS, Khair Kal Wana. |
| 10. | 1477 | Mohammad Yasir SET GHS, Birle A. Abad |
| 11. | 1640-A | Rasheed Ahmad SET GHS Oghi Mansohra |
| 12. | 1689 A | Abdul Wahid SET GHS Barghat FR Bannu. |
| 13. | 1728-A | Gulzar Ahmad SET GHS Tarbela Haripur |
| 14. | 1887 | Muntazir Hussain Shah SET, Haveli A. Abad |
| 15. | 1905-A | Haji Yousaf Jan SET GMS Landaki Charsadda |
| 16. | 1905-C | Sardar Azam SET GHSS Shah gram Chitral |
| 17. | 2013-A | Raza Multammad, SET GMS Wacha Dara Swat |
| 18. | 2022-A | Hassan Farid SET GMS Tarkhuba Khyrd FR, Bannu |
| 19. | 2022-b | Ghulam Jan, SET GHS Sam Swat |
| 20. | 2052-A | Mubarak Khan SET GHS, Raghzi Kella NWA |
| 21. | 2123-A | Fazal Karim SET GMS, Azizur Rehman Idilli - FR-Poolawar. |
| 22. | 2139(1) | Doctor Walli, SET GHS Rajshah, Chitral |
| 23. | 2139(2) | Nasim ur Rehman SET GMS Lashkoshli, Chitral |
| 24. | 2139(3) | Mohammad Kamal-ud-Din SET GMS Jughoor, Chitral |
| 25. | 2139(4) | Rajuli Khan SET GHS Kufri, Chitral |
| 26. | 2139(5) | Zia -ud- Din SET GMS Chitral |

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| 27. | 2159-A | Ghulara Husnain Qammar SET Rangpur, Shomali D.I. KHAN |
| 28. | 2179-A | Shor-ur-Rahman SET GHS Lassan Nawab Manshera |
| 29. | 22243-25 | Rohmat Ullah SET GMS Baphur Jaddod FR Tank |
| 30. | 2239-A | Liaqat Ali SET GMS Momin Khel FR Bannu |
| 31. | 2261-A | Said Kamal SET GHS Holi Lundali Mardan |
| 32. | 2283-A | Abdul Bari, SET GHSS Zaida Swabi |
| 33. | 2285-a | Zia ur Rehman SET ADO (Male) Nowshera |
| 34. | 2269-A | Gulab Din SET GHS Bangla Manshera |
| 35. | 2273 A | Khalil ur-Rahman SET GHS Shaghi Swat |
| 36. | 2289 B | Altaf Hussain SET GMS No.2 D.I. Khan |
| 37. | 2321-A | Ghulam Sarwar SET GHS Muthla Qaddem Peshawar |
| 38. | 2322-A | Sand Ullah Jan, SET GHSS Abakhol, Lakki |
| 39. | 2325-A | Mir Akbar Khan SET GHSS Mori Lashli, Chitral |
| 40. | 2330-A | Abul Munaf SET GMS Jamu FR Kohat |
| 41. | 2330(2) | Abdul Azam SET GHS Ujno Chitral |
| 42. | 2330(3) | Bolan Jan, SET GHS Morai, Chitral |
| 43. | 2330(5) | Syed Abdul Nasir SET GHS Koshi Chitral |
| 44. | 2330(6) | Mohammad Ayub SET GHS Chumurkon, Chitral |
| 45. | 2330(7) | Mir Ajam, ADO Local Office Chitral |
| 46. | 2336(1) | Syed Nasir, Jamal Shah SET GHS Dehri Kalil Khel Nowshera |
| 47. | 2336(7) | Iqbal ud Din SET GHS Morai Chitral |
| 48. | 2337(4) | Abdur Rahmat ADO (P&D) EDO Office, Chitral |
| 49. | 2337(5) | Shahir Khan, SET GHS Breap, Chitral |
| 50. | 2337(7) | Noor Gul SET GMS Abdul Kor Mohmand Agency |
| 51. | 2337(14) | Khair ur Rahman SET GMS Shishi, Chitral |
| 52. | 2337(16) | Maseeh ur Rahman SET GMS Ayaz Kot NWA |
| 53. | 2337(18) | Noor Ahmad Ali Shah SET GHS Alam Gudar Khy Agency |
| 54. | 2337(19) | Muhammad Abbas SET GHS Chuprial, Swat |
| 55. | 2337(21) | Mehrab Shah, SET GHS Balna Manshera |
| 56. | 2337(24) | Badl-uz Zaman SET GHS Dost-ra Charsadda |
| 57. | 2337(26) | Abdul Samad SET GMS Ridi Chitral |
| 58. | 2337(29) | Majid Ullah SET GHS Bandal Swat |
| 59. | 2337(30) | Hidayat Ullah SET GHS Dabli Lawaghar, Karak |
| 60. | 2337(31) | Alam Zoh SET GHS Bahdar Khel Karak |
| 61. | 2337(32) | Umar Siddiq SET GHSS Jahangri Karak |
| 62. | 2337(33) | Liaqat Ali Khan SET GHS Asala Swat |
| 63. | 2337(34) | Raham Zad SET GMS Ahmad Khel Karak |
| 64. | 2337(37) | Abdul Waheed SET GHS No.3 AVabad |
| 65. | 2337(39) | Masal Khan SET GHS Delta Bahadur Peshawar |
| 66. | 2337(40) | Muhammad Iqbal SET GHS Himat D.I. KHAN |
| 67. | 2337(41) | Iftikhar Ahmad SET GHS Bagra Harl Pur |
| 68. | 2337(43) | Zar Hiyat SET GHS Shoghor, Chitral |
| 69. | 2337(44) | Dilaram Khan SET GMS Bahml Chitral |
| 70. | 2337(45) | Sadar Ali SET GHS Breap Chitral |
| 71. | 2337(46) | Adina Khan SET GHS Parabeg, Chitral |

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| | 2337(47) | Syed Hasan Shah SET GHSS Gram Chasma |
| | 2337(48) | Syed Ali Dinn SET GHS Holchind Chitral |
| 74. | 2337(49) | Mohammad Raheem Bop SET GHS Charun Chitral |
| 75. | 2337(50) | Adur Rahman SET GHS Chirun Chitral |
| 76. | 2337(51) | Kamal Din SET GHS Koshi Chitral |
| 77. | 2337(52) | Shah Zar Khan SET GHS Rughzal Kalil NWA |
| 78. | 2337(53) | Sardar Ali SET GHS No.3, Peshawar City |
| 79. | 2337(60) | Ghulam Murtaza SET GHS Mastoog Chitral |
| 80. | 2337(61) | Mohammad Khalid Maloon SET GMS Ahad Khan Swabi |
| 81. | 2337(63) | Fateh ul Qamar SET GHSS No.3, Peshawar City |
| 82. | 2337(64) | S.Sadiq Hussain Shah SET GHS Kanshan Mansohra |
| 83. | 2337(65) | Stra ul Haq SET GHS Shohal Mazaulah Mansohra |
| 84. | 2337(66) | S.Mohboob Shah SET GHS Khair Abad Mansohra |
| 85. | 2337(67) | Khawaja Mohammad SET GHS Khaki Mansohra |
| 86. | 2337(68) | Liaqat Ali SET GHSS No.1, Mansohra |
| 87. | 2337(69) | Anwar Zeb SET GHSS Daryal Mansohra |
| 88. | 2337(70) | Munawar Khan SET GHSS Batul Mansohra |
| 89. | 2337(71) | Shabir Ahmad ADO MALE Mansohra |
| 90. | 2337(72) | Mlalat Ullah SET GMS Aman Gar Nowshera |
| 91. | 2337(73) | Hazrat Younis SET GHS Kokaral Swat |
| 92. | 2337(74) | Saloom Ullah SET GHSS Mangora Swat |
| 93. | 2337(75) | Habib ur Rehman GCMHS, Peshawar City |
| 94. | 2337(76) | Shah Jehan SET GHS Mohandari Mansohra |
| 95. | 2337(77) | Muhammad Asif SET GHS No.2 A/Abad |
| 96. | 2337(78) | Abdur Rasheed SET GHSS Nawashar A/Abad |
| 97. | 2337(79) | Arshad Khan SET GHST Shelkhan A/Abad |
| 98. | 2337(80) | Muhammad Javid SET GHS Shelkhu Bandi A/Abad |
| 99. | 2337(80)A | Nasir ud Din SET GHS Bhorkand Mansohra |
| 100. | 2337(81) | Munir Gul SET GHS Harno Azizabad A/Abad |
| 101. | 2337(82) | Nasim Iqbal SET GHS No.4 A/Abad |
| 102. | 2337(83) | Gul Muhammad SET GCMS Batagram |
| 103. | 2337(84) | Lal Khan SET GHSS Mir Pur A/Abad |
| 104. | 2337(85) | Muhammad Akhtar Khan SET GHS Nagal Pur -Haripur |
| 105. | 2337(87) | Shah ud din SET GHS Ashraf Chitral |
| 106. | 2337(88) | Abdul Lateef SET GHS Khan Pur, Haripur |
| 107. | 2337(89) | Iqbal Hussain SET GMS, Kos pur Chitral |
| 108. | 2337(90) | Kilayat ur Rahman SET GHS Shelkh Dorl Swabi |
| 109. | 2337(91) | Said Kamal SET GHS Tarkal Swabi |
| 110. | 2337(92) | Azhar Iqbal SET GHS Illovangi Shangla |
| 111. | 2337(93) | Rehmat Ali SET GHS Parral Swat |
| 112. | 2337(94) | Inayat Ullah SET GHS Goli Bagh Swat |
| 113. | 2337(95) | Javajd Khan AQC Charsadda |
| 114. | 2337(96) | Races Khan SET GHS Shah Ibrahim Kuram |
| 115. | 2337(97) | Zahid Hussain SET GHS No.2, Tangi Charsadda |
| 116. | 2337(98) | Ibnl Yamin SET GHS Dhamtor A/Abad |

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- 3. Secretary to Govt. of NWFP Finance Department
- 4. Director Elementary & Secondary Education NWFP Peshawar
- 5. Director PITE NWFP Peshawar
- 6. Director Education IATA NWFP Peshawar
- 7. All EDOs E&SE in NWFP
- 8. All District /Agency Accounts Officers
- 9. PS to Chief Secretary NWFP
- 10. Officers concerned
- 11. PS to Minister Elementary & Secondary Education NWFP
- 12. PS to Secretary Elementary & Secondary Education NWFP
- 13. Office Order File

(ARIF JAMIL)

SECTION OFFICER (PRIMARY)

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60/100 ANNEX NO 13
 BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1241/2011

Rahmatullah, SET, GMS Baghul Jadid,
 F.R Tank.

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Peshawar.
2. Secretary, Finance Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Director (E&SE), Khyber Pakhtunkhwa, Peshawar. (Respondents)

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 TO THE EFFECT THAT NOTIFICATION NO:SO(PE)2-6/DPC/UPGRADATION/SET'S BS-16 to BS-17 DATED 3.11.2010 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM BPS-16 to BPS-17 TO THE SET'S INCLUDING APPELLANT W.E.F. 20.1.2010 INSTEAD OF 1.10.2007 AND DIRECTION TO THE RESPONDENTS TO SUBSTITUTE THE WORD (PERSONAL) WITH NOTIFICATION AND ALSO TO GRANT THE ANNUAL INCREMENT TO THE APPELLANT FOR GRADE-1/.

| S.No. | Date of hearing | Order or other proceedings with signature of Judge/Magistrate |
|-------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 5.11.2012 | 3 Counsel for the appellant, and Mr. Sheratgan Khattak, AAG present. The respondents have been placed ex-parte on 13.6.2012 yet Abbas Ali, S.O. (Litigation), Mosam Khan, AD and Muhammad Irshad, SO (Litigation) on behalf of the respondents present to assist the Tribunal. Ex-parte arguments heard and available record perused. 2. This appeal has been filed under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, with the prayer that notification dated 20.1.2010 may be modified and treating the same w.e.f. 1.10.2007 and omitting one time and personal from the same. The appellant further prayed that upgradation/promotion may be treated as |

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3. The learned counsel for the appellant stated that similar nature cases of other colleagues of the appellant have already been decided by this Tribunal vide judgment dated 3/7/2009 in Service Appeal No. 266/2009 titled "Haroon-ur-Rashid Versus the Secretary (E&SE) Government of Khyber Pakhtunkhwa, Peshawar and dated 23/2/2010 in Service Appeal No. 41/2010 titled "Hukum Khan Versus Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and another". He further stated that the present appellant is also entitled to the same treatment as per judgment of august Supreme Court of Pakistan as reported in 1996-SCMR-1185. He requested that the appeal may be accepted as prayed for. Representatives of the respondents also confirmed about judgment of this Tribunal in the aforementioned Service Appeals.

4. In view of the above, this appeal is also decided in the same terms and with the same directions as issued in Service Appeal No. 266/2009 and 41/2010 decided on 3/7/2009 and 23/2/2010 respectively. However, the respondents should ascertain that the present appellant is similarly placed person to the appellants in the aforementioned Service Appeals or otherwise. Parties are left to bear their own costs. File be consigned to the record.

5. This order will also dispose of other connected Service Appeals No. 1242/2011 Ghulam Habib, 1243/2011 Nasrullah Jan, No. 1244/2011 Akbar Zaman, No. 1245/2011 Muhammad Yaqoob, and No. 1246/2011 Muhammad Shafiq in the same manner.

ANNOUNCED
5.11.2012.

Sd/- Sajid Mansoor Ali Qazi
Member
Sd/- Nadeem Ali Baki
Member

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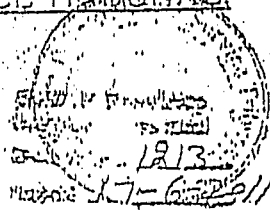
Date: 23/11/2012

[Handwritten notes and signatures in the left margin]

(12)

BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

S.A. No. 1243 of 2010.



Nasrullah Jan SFT, GHS:
Begu. Khel, Lakki Marwat..... (Appellant)

Versus

1. Govt : of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Secretary finance Govt; of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Chief Secretary, Govt of Kyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 4) Director Elementary & Secondary Education, Peshawar..... Respondents

Handwritten notes:
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

APPEAL U/S 4 OF THE N.W.F.P. SERVICE TRIBUNAL ACT, 1974 TO THE EFFECT THAT NOTIFICATION No. SO(PE) 2-6/DPC/ UPGRADATION/ SET's BS-16 to BS-17 DATED 03-11-2010 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM BPS-16 TO BPS-17 TO THE SET'S INCLUDING APPELLANT W.E.F. I.E. 20-01-2010 INSTEAD OF 01-10-2007 AND DIRECTION TO THE RESPONDENTS TO SUBSTITUTE THE WORD (PERSONAL) WITH NOTIFICATION AND ALSO TO GRANT THE ANNUAL INCREMENT TO THE APPELLANT FOR GRADE-17.

Respectfully Sheweth:-

Brief facts giving rise to instant appeal are as under:-

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11.2012

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Counsel for the appellant and Mr. Sher Afgan Khattak, AAG present. Abbas Ali, S.O (Litigation), Mousam Khan, AD and Muhammad Imtiaz, S.O (Litigation) on behalf of the respondents also present to assist the Tribunal. Ex parte arguments heard and available record perused. Vide our detailed order of to-day in connected appeal No. 1241/2011 Rahmatullah Versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar etc., this appeal is also disposed of as per detailed order. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
5.11.2012

Sd/-
Mousam Khan

Sd/-
Mousam Khan

Certified copy
Peshawar

Date: 27-11-2012
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Date: 27-11-2012
27-11-2012

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the 05.09.2019

NOTIFICATION

No.SO (PE)E&SED/2-6/DPC Meeting/2019:- On the recommendations of Departmental Promotion Committee (DPC) in its meeting held 10.07.2019, the Competent Authority (Chief Secretary Khyber Pakhtunkhwa) is pleased to upgrade /promote the following SSTs (Male/Female) from BS-16 to BS-17 (Personal & Regular), in light of Court Judgement/acceptance of appeal by the competent authority as mentioned against each name:-

| S.# | Name & Present Place of Posting | Date of Birth | Date of Appointment | Remarks |
|-----|----------------------------------------------------------------------------------|---------------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Musculah Jan, Ex-SST, GHS Bago Khel, Lakki Marwat | 27.10.1958 | 09.06.1987 | Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012. |
| 2 | Muhammad Yaqoob, Ex-SST, GMS Din Muhammad, FR Tank | 25.12.1956 | 21.11.1937 | Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012. |
| 3 | Rehmat Ullah, Ex-SST, GMS Bughul Indeed, FR Tank | 25.01.1958 | 01.01.1991 | Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012. |
| 4 | Muhammad Shafique Khan, Ex-SST, GHS Tap Tukhai Khel, Lakki Marwat | 28.07.1967 | 10.11.1994 | Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012. |
| 5 | Akbar Zaman, SST, GHS Nar Muzaffar, Laidel Tarwat | 04.09.1963 | 12.10.1995 | Upgraded from DPS-16 to DPS-17 (Personal) w.e.f 01.10.2007 instead of 20.01.2010 in the Light of Khyber Pakhtunkhwa Service Tribunal Judgment dated 05.11.2012. |
| 6 | Mr. Shokat Hussain, Ex-SST, Govt. Shahheed Israr High School Para Chinar, Kurram | 26.08.1954 | 17.12.1992 | Upgraded from DPS-16 to DPS-17 (Personal) in the Light of Peshawar High Court Judgment Dated: 16.05.2018 w.e.f 01.10.2007 subject to the outcome of CPLA pending in Supreme Court of Pakistan in the case titled "Shokat Hussain VS Govt. of Khyber Pakhtunkhwa through Secretary E&SE Departments & Others. |
| 1 | Mst. Safia Begum, H/M, BS-17, GGHS Palosai Mughdarzal, Peshawar. | 01.05.1956 | 26.09.1988 | Promoted as H/M, BS-17 w.e.f 17.03.2016 on regular basis instead of 18.04.2017 in light of acceptance of appeal by the competent authority |

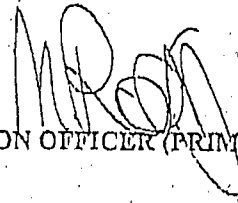
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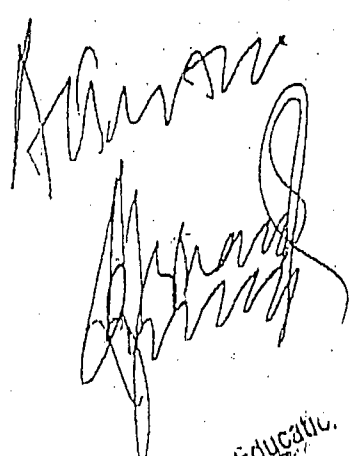
SECRETARY

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Copy forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
4. PSO to Chief Secretary to Govt. of Khyber Pakhtunkhwa.
5. PSO to Additional Chief Secretary FATA.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director ESRU, Khyber Pakhtunkhwa.
8. The Director, Curriculum and Teacher Education, Abbottabad.
9. The Director Education (Newly Merged Districts), Warsak Road Peshawar.
10. The Deputy Director EMIS, E&SE Department, with the request to upload this notification on E&SE Department website (www.kpese.gov.pk).
11. The Section Officers (Male/Female), E&SE Department, Peshawar.
12. The District Education Officers, Elementary & Secondary Education concerned.
13. The District Accounts Officers concerned.
14. The Principal/Headmaster/Headmistress concerned.
15. PS to Secretary, E&SE Department.
16. PA to Additional Secretary (Estab), E&SE Department.
17. Officers concerned.


SECTION OFFICER (PRIMARY)


Divisional Education
Officer Male Bah

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Dated: 26-09-2019

To,
The Secretary (E&SE) Education Department
Peshawar- Khyber Pakhtun Khawa.

Subject: Allow the Petitioner's up gradation Application from 01-10-2007 Instead of 20-01-2010, in the light of Services Tribunal Judgment dated: 05-11-2012.

Respectfully Stated as,

- 1- That according to the Notification No: SO(PE)2-6/SET (BPS-16) dated 20-01-2010 up gradation to BPS-17, about 168 SETs (M), 20 SETs (F) and 02 SETs (Technical Male) were upgraded from BPS-16 to BPS-17 with effect from 20-01-2010, in that Notification the Petitioners/Applicants namely 1) Hayat ullah khan at S.No 06 2) Abdul Wahid at S.No: 12 3) Hassen Farid at S.No: 18 4) Liaqat Ali at S.No: 30 and 5) Shah Zar at S.No: 77 were also up graded from BPS-16 to BPS -17. (The said Notification Is attached).
- 2- That in that particular Notification dated: 20-01-2010 one Nasrullah Jan SET, at GHS- Begu Khel, Lakki Marwat was also up graded from BPS-16 to BPS-17 which was placed At S.No: 05 in the Notification, was dissatisfied/aggrrieved from the up gradation Notification dated: 20-01-2010 and instituted Appeal in KPK Services Tribunal- Peshawar in the year 2011 against such up gradation policy.
- 3- That Services Tribunal decided the Appeal in favor of Appellant and delivered a Judgment on 05-11-2012 that the up gradation from BPS-16 to BPS-17 will be from 01-10-2007 Instead of 20-01-2010, and directed the Secretary Education, the Respondent No: 01 to upgrade the Appellant to BPS-17 w. e. from 01-10-2007 and Not from 20-01.2010.
- 4- That on 05-09-2019 vide notification No: SO(PE) E & SED/2-6 DPC meeting held on 10/07/2019, the Appellant namely Nasrullah Jan along others 6 SETs with one Female SET were up graded from BPS-16- to BPS-17 with effect from 01-10-2007 Instead of 20-01-2010 in the light of the said Judgment of Services Tribunal dated 05-11-2012.
- 5- That the stance of the below Petitioners/Applicants are similar, they have the same Right to be up graded with effect from 01-10-2007 instead of 20-01-2010.

Yours Obediently,

1) Hayat ullah khan (SET)

2) Abdul Wahid (SET)

3) Hassen Farid (SET)

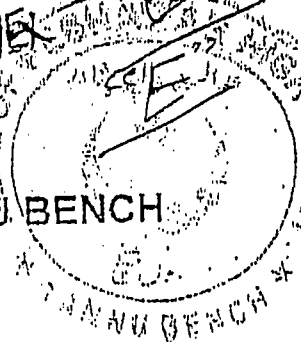
4) Shah Zar (SET) And

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(17) (17) ANNE
IN THE PESHAWAR HIGH COURT, BANNU BENCH

W.P. No. 672 of 2020



1. Mr. Hayat Ullah S/O Wali Jan, R/O Muwar Killa, P/O Domail, District Bannu.
2. Mr. Abdul Wahid (R) Head Master, R/O Chushmi, Tehsil Domail, District Bannu.
3. Mr. Hassan Farid (R) SET, R/O Aimal Killa, Khander Khan Khel, Tehsil Domail, District Bannu.
4. Mr. Liaqat Ali Khan (R) SET, GMS Chashma Khader Khel, NWA.
5. Mr. Shahzar Khan Head Master SET, Govt High School Zarwan FR Bannu

----- PETITIONERS

VERSUS

The Govt of KPK through:-

1. The Secretary (E&SE Department) Peshawar, KPK
2. The Director (E&SE Department) Peshawar, KPK
3. The Secretary Finance, Civil Secretariat, Peshawar, KPK

----- RESPONDANTS

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Additional Registrar

Re-Filed Today

17 JUL 2020

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Additional Registrar

Filed Today

15 JUL 2020

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Additional Registrar

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WRIT PETITION UNDER ARTICLE: 199(1) OF THE
CONSTITUTION OF PAKISTAN-1973

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Peshawar High Court
Bannu Bench

(10) (18)

IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

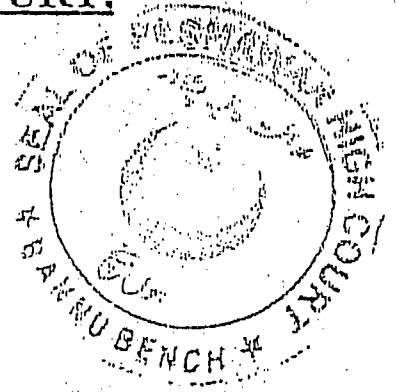
(Judicial Department)

W.P No. 672-B of 2020

Hayatullah and others

Vs.

Govt. of Khyber Pakhtunkhwa etc.



JUDGEMENT.

Date of hearing 18.10.2022

For petitioner: Mr. Ikramullah Khan Marwat.

For respondent: Sardar Muhammad Asif Asstt: A.G

SAHIBZADA ASADULLAH, J.— The petitioner approached this Court by invoking its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, with the prayer "It is therefore, most humbly prayed that on acceptance of this writ petition, the hon'ble Court may be pleased to: (1) Declare the inaction and not treating the petitioner at par with their colleague whom granted same relief (upgradation BPS-16 to 17, w.e. from 01.10.2007), vide notification dated 05.09.2019 may be declared as illegal, unconstitutional without authority and discriminatory. (2) Direct. The respondents may further please be directed to treat the petitioner at par with Rehmatullah and others colleagues whom granted relief of Up-gradation from BPS 16 to BPS 17 w.e. from 01.01.2007 vide notification dated 05.09.2019 and the same may also be allowed to the petitioners from their due date 01.10.2007

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EXAMINER
Peshawar High Court
Bannu Bench

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with all consequential benefits under the principle laid down by the Supreme Court in judgment reported as 2009 SCMR 1 & 2018 SCMR 380. Any other remedy which this hon'ble Court deems fit & appropriate that may also be granted in favour of petitioners. "

2. Brief facts of the case leading to file the instant writ petition are that, initially the petitioners were appointed on temporary bases and thereafter their service was regularized. Thereafter, on 01.10.2007 the Government of Khyber Pakhtunkhwa issued a notification for up-gradation of their posts to BPS-17. In compliance of the notification some of their colleagues were upgraded from BPS-16 to BPS-17, but the petitioners and some others were ignored, therefore, some of the colleagues of the petitioners have filed appeal before the Service tribunal, Peshawar which was accepted vide judgment dated 05.11.2012. The department in compliance of the judgment dated 05.11.2012 upgraded the petitioners and others vide order dated 05.09.2019. The petitioners moved an application to the department for up gradation of petitioners in light of the judgment of service tribunal, but the respondents turned deaf ear. Hence, the instant writ petition.

3. The learned counsel for the petitioners alongwith Asstt. Advocate General were heard at length and with their valuable assistance the record was gone through.

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MEMBER HIGH COURT
BANNU Bench

(40) (78)

4. The controversy brought for resolution before this court is the retrospective effect to the up-gradation granted in favour of the petitioners. Though this court is conscious of the fact that in case of up-gradation it has competency to intervene, but once the posts are upgraded, then in that eventuality, its prospective or retrospective effect does not fall within the competence and jurisdiction of this court, as in case of asking for seniority or otherwise it is the competent forum that has been created for the purpose. The learned counsel for the petitioner wanted the indulgence of this court by referring to few judgments passed by superior courts of the land and we keenly went through the same. We are afraid that the precedent relied upon by the petitioners do not support the stance of the petitioners, as in those judgments it has been clarified that in case of up-gradation high court is competent enough to entertain, but before us is not the question of up-gradation, rather, it's after math.

5. The learned counsel for the petitioners referred to the case of similar placed employees, who approached the provincial Service Tribunal and that their appeals were allowed. The learned counsel wanted this court to press into service the rule of consistency and to allow the petitioners on that score too, but we are mindful of the facts that Service Tribunal has ample powers to implement its order/

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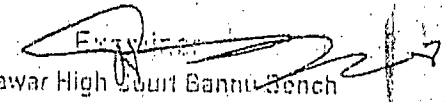
(213) (213)

judgment, if petitioners want indulgence of this court on that score alone, then again they are to approach the said forum by asking implementation of the judgment passed in case of similar placed employees, but, if the petitioners want indulgence of this court for providing retrospective effect then we are afraid that this court cannot.

6. The cumulative effect of what has been stated above, leads this court nowhere but to hold that this court is lacking competency. A clog has been put on its powers under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, and that being civil servants, the petitioners should approach the competent forum, which is no other than the Provincial Service Tribunal for redressal of their grievances. The instant writ petition is lacking substance as such the same is answered in negative. However, the petitioners are at liberty to approach the competent forum for redressal of their grievances.

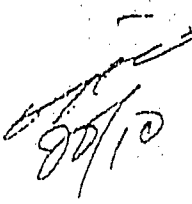
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18.10.2022
Azam/P.S

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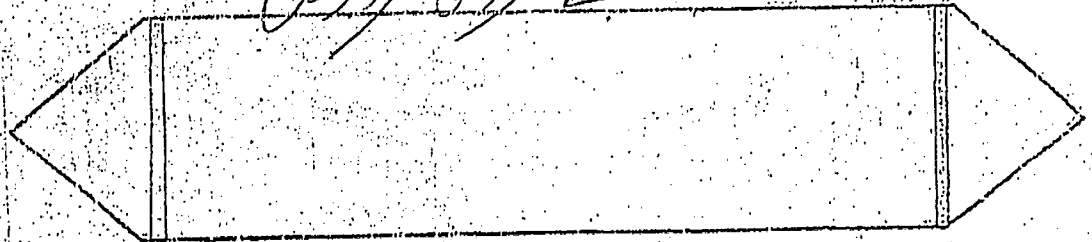

Engr. Azam
Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Oanun-e-Shahadal Ordinance 1984

(D.P)
Hon'ble Mr. Justice Bahiyya Azharullah
Hon'ble Mr. Justice Shahid Khan

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SCANNED
20 OCT 2022


بعد الت حنا سے سرور کی سرپرستی



2 جناب
بیتام

مورخہ --- BC-092580
 مقدمہ --- Mchc 0337.0337584
 ڈیوٹی ---
 م.ج ---

باعث تحریر آفک

مقدمہ میں مذکورہ جج عدالت عالیہ نے اپنی نظر سے اس سے زیادہ کے پیرور کی اور جواب دہی اور کپ انکار وائی منصفانہ
 آئین مقام پیرور کیلئے محمد عبدالمنیر اور دیگر کے حق میں
 جج عدالت کے اقرار کیا جاتا ہے کہ وہ صاحب مقدمہ کو مسترد کرنے کے لئے انکار وائی کا کامل اختیار ہوگا۔ نیز
 ڈیکلریشن صاحب کو اس کے لئے اختیار دیا گیا ہے۔ یہ فیصلہ برعکس ہے۔ یہ جج صاحب دہی اور اقبال ڈیوٹی اور
 اس وقت ڈیوٹی کرنے کے لئے اجراء اور صورتوں پر ایک دور یہ ہے اور اس کے لئے اور درخواست ہر قسم کی تصدیق
 ذرا میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورتوں میں پیرور کی یا ڈیوٹی کی طرف یا اپیل کی برآمدگی اور منسوخ
 نیز دائر کرنے کے لئے اپیل گزار کی اور نظر ثانی اور پیرور کی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ میں مذکور
 کے لئے یا پیرور کی کا وائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے مجھے تقریر کا اختیار
 ہوگا اور صاحب مقدمہ رٹورہ کو بھی وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا سامان
 یہ اختیار منظور قبول ہوگا۔ دوران مقدمہ میں جو شرط ہر جات التوا سے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیرور کی
 نہ کوڑ کریں۔ لہذا وکالت نامہ لکھ دیا کہ مسترد ہے۔

Accepted

Accepted

Accepted

المرقوم 26 ماہ 2022

وہ العباد

نفسا

عبدالمنیر
Abdul Manir