FORM OF ORDER SHEET

Court of_____

; Case No.-___

153/**2023**

	Ť	155/2025
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/1/2023	The appeal of Mr. Muhammad Asim presented today by Mr. Kabir Ullah Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawa on Parcha Peshi is given to appellant/counsel.
		By the order of Chairman REGISTRAR
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EFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Appeal No. <u>153</u> of 2022

Muhammad Asim Ex constable No. 536 R/o Esak Chontra Tehsil and District Karak.

..... APPELLANT

<u>VERSUS</u>

- 1) Provincial Police Officer, Government of Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3) Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.

4) Commandant Elite Force Khyber Pakhtunkhwa Peshawar

..... RESPONDENTS

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· · .	Appeal and rejection order	·	

Through

Appellant

Kabir Ullah Khattak -& Rooeda Khan **Advocates High Court**

Peshawar

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER

Appeal No. 15% of 2022

Muhammad Asim Ex constable No. 536 R/o Esak Chontra Tehsil and District Karak.

..... APPELLANT

VERSUS

- 1) Provincial Police Officer, Government of Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3) Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
- 4) Commandant Elite Force Khyber Pakhtunkhwa Peshawar

...... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 05/01/2021 WHEREBY THE APPELLANT HAS BEEN AWARDED PUNISHMENT OF DISSMISSAL MAJOR FROM SERVICE AGAINST WHICH THE APPELLANT **FILED DEPARTMENTAL** APPEAL 17.11.2022 ON WHICH . WAS **REJECTED** ON 09.12.2022 WHICH WAS **COMMMUNICATED TO THE APPELLANT** ON 21/12/2022.

PRAYER:

On acceptance of this Service Appeal the impugned order dated 05/01/2021, 09/12/2022 may

kindly be set aside and the appellant may kindly be reinstated in service with full wages and benefits.

2)

Any other remedy which relief deemed appropriate in the circumstances of the case, not specially ask for, may also be granted to the appellant:

<u>Respectfully Sheweth:</u>

Short Facts given rise to the present appeal are as under:-

The appellant respectfully submits as under:

- That the appellant has been initially appointed as Constable in Police Department since long time.
- 2) That after appointment the appellant performed his duty with great zeal, zest and devotion and no complaint what so ever has been made against the appellant.

3) That the appellant while posted on deputation to Elite Force Khyber Pakhtunkhwa Peshawar a false and fabricated case FIR No. 608 dated 25/0/2020 U/S 302,324/34 PPC Police Station District Karak has been lodged against the appellant in which the appellant was arrested and later on acquittal in the instant case on 11/10/2022. (Copy of acquittal order is attached as Annexure-A). That the appellant was dismissed from service on the ground of the above mention criminal case on 05/01/2021. (Copy of dismissal order is attached as Annexure-B).

That after acquittal of the above mentioned case the appellant filed Departmental Appeal on 17/11/2022 which was rejected on 09/12/2022, which is communicated to the appellant on 21/12/2022. (Copy of Departmental Appeal and rejection order are attached as Annexure-C & D),

6) That the appellant now files the instant Service Appeal before this Hon' able Service Tribunal inter alia on the following grounds.

GROUNDS OF APPEAL

A). That the respondents have not treated the appellant in accordance with law rules, and policy which is a clear cut violation of Article-04 of the Constitution of the Islamic Republic of Pakistan 1973 therefore the impugned order is not sustainable in the eyes of law.

 B). That the impugned order of dismissal from service of the appellant was passed on 05/01/2021 which is passed by the

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incompetent authority which comes under the definition of void order.

C). That no charge sheet no statement of allegation has been issued or served to the appellant which is a clear cut violation of Rule-06 (i) (a) of Police Rules 1975.

D). That the appellant has not been suspended by
the respondent Department before the
dismissal order which is against the law and rules.

E) That the respondent Department should be waited for the decision of the criminal case according to law and rules.

F)

That no Departmental or regular inquiry was conducted by the respondent Department against the appellant and no show cause notice has been issued or served to the appellant.

G) That the appellant has already be acquitted from the charge leveled against him.

 J). Any other grounds will be raised at the time of arguments with prior permission of this Hon' able Tribunal. It is therefore most humbly prayed on acceptance of this Service Appeal the impugned orders dated 05/01/2021, 09/12/2022 may kindly be set aside and the appellant may kindly be reinstated in service with full wages and benefits:

Any other remedy which this august tribunal deems fit that may also onward granted in favor of appellant. A

Appellant

Through

Kabir Ullah Khattak & Roeeda Khan

Advocates, High Court, Peshawar.

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Appeal No. _____ of 2022

Muhammad Asim Ex constable No. 536 R/o Esak Chontra Tehsil and District Karak.

..... APPELLANT

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<u>VERSUS</u>

- 1) Provincial Police Officer, Government of Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3) Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
- 4) Commandant Elite Force Khyber Pakhtunkhwa Peshawar

..... **RESPONDENTS**

APPLICATION FOR CONDONATION OF DELAY (IF ANY).

Respectfully Sheweth:

- 1) That the petitioner/appellant has filed the accompanied appeal today in which no date has yet been fixed.
- 2) That petitioner/appellant has a good prima facie case and is hopeful for its success and the grounds mentioned in appeal may be treated as integral part of this application.
- 3) That the impugned order of dismissal from service of the appellant was passed on 05/01/2021 which is passed

by the incompetent authority which comes under the definition of void order.

- 4) That no limitation can run against a void order.
- 5) That after acquittal of the above instant case the appellant filed a Departmental Appeal on 17/11/2022 which was rejected on 09/12/2022, which is communicated to the appellant on 21/12/2022.
- 6) That there are many Judgment of the Supreme Court that cases should be decided on merit rather than on technicality.
- 7) That there are specific provision of law as well as Judgment of Supreme Court that limitation has been counted from the date of communication.

It is, therefore, most humbly prayed that on acceptance of this application the delay if any may be condoned in the interest of justice.

Petitioner /Appellant

Through

Kabir Ullah Khattak

Rooeda Khan Advocates, High Court Peshawar

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

Appeal No. _____ of 2022

Muhammad Asim Ex constable No. 536 R/o Esak Chontra Tehsil and District Karak.

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<u>VERSUS</u>

- 1) Provincial Police Officer, Government of Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3) Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
- 4) Commandant Elite Force Khyber Pakhtunkhwa Peshawar

..... **BESPONDENTS**

ADDRESSES OF THE PARTIES

<u>Appellant</u>

Muhammad Asim Ex constable No. 536 R/o Esak Chontra Tehsil and District Karak.

Respondents

- 1) Provincial Police Officer, Government of Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshawar.
- 3) Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.
- 4) Commandant Elite Force Khyber Pakhtunkhwa Peshawar

Appellant Through

Kabir Ullah Khattak

Rooeda Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

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..... **RESPONDENTS**

AFFIDAVIT

I, Muhammad Asim Ex constable No. 536 R/o Esak Chontra Tehsil and District Karak do hereby solemnly affirm and declare on oath that the content of the above application are true and correct to the best of my knowledge and belief and nothing has been kept secret and concealed from this Hon'ble Tribunal.

Identified by Kabir Ullah Khattak 1 R.

DEPONENT

Advocates High Court Peshawar

Roeeda/Khan -

IN THE COURT OF TUFAIL AHMAD, ADDL: SESSIONS JUDGE-II, KARAK

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(10)

The State Vs Asim etc (Session trial No.52 /7 of 2022)

No. of Order	Date of Order of Proceedings	Order/Proceedings
1	2	3
Tadec .	11/10/2022	Accused Muhammad Asim produced in custody while
		Muhammad Kashif on bail being exempted through
		counsel present. Complainant absent. Yousaf Jamal,
-		Sr. Public Prosecutor for the State present. Arguments
4		on application u/s 265-K Cr.PC already heard.
		2. Through this order I intend to dispose of the
		application submitted by accused for their acquittal
		under section 265-K Cr.PC.
		3. Accused facing trial are charged in case F.I.R No.608
		dated 25.09.2020 under section 302/ 324/34 PPC of
		Police Station Sabirabad, District Karak.
-		4. Brief facts of the case are that on 25.09.2020 at 23.30
		hours, complainant Muhammad Suleman brought the
		dead body of his brother Muhammad Fidak and an
•	•	injured to the Emergency Room of KDA Hospital
	. *	Karak wherein he reported the matter to police that at
		the time of occurrence, he alongwith his deceased
		brother Muhammad Fidak had gone to music program
		organized by Lal Badshah on eve of marriage
		ceremony where other people were also present. At
· 、	•	22.30 nours, accused Asim and Muhmmad Kashif
		duly armed arrived there and on seeing them, both of
		them started firing, and with the firing of accused,
		Asim Khan his brother got hit and died at the spot
•		while from their firing one Asmat Ullah present in the
		said marriage ceremony was also hit and got injuries,
		whereas he (complainant) and other people present
	and the second	there escaped unhurt. Mctive of the offence disclosed
		in the FIR to be previous ill-will between the parties.
	1	

· ·	
11.10.2021	Thus, case was registered against the accused vide FIR
11.10.202.1	No. 608, referred to above.
	5. On completion of the investigation, challan was
	submitted against the accused. Accused were
	summoned, accused Muhammad Asim produced in
	custody while accused Muhammad Kashif on bail
•	present. Copies of the relevant documents were
	handed over to accused in compliance of section 265-
•	C (1) Cr.PC . Formal charge was framed against the
· · ·	accused; however, they pleaded not guilty and claimed
•	trial, therefore, the prosecution was directed to
	produce its evidence. Prosecution has so far examined
	(08) PWs in support of its case. After which, an
	application under section 265-K Cr.PC was submitted
• •	on behalf of accused facing trial for their acquittal.
•	6. Arguments on the application U/S 265-K Cr. PC
	already heard and record perused with due assistance.
	7. From perusal of the rebord, it transpires that the
· · ·	occurrence as mentioned in the FIR is occurred at late
•	night time, while no source of light has been
,	mentioned by complair ant in his initial report,
2 · · ·	therefore, element of misidentification of accused
	facing trial cannot be ruled out in the present case.
	Moreover, complainant has not mentioned the
	description of weapons of offence used by the accused
	facing trial at the time commission of offence in his

Similarly, complainant in his initial report Ex PW-3/1 stated that both the accused facing trial had also made firing on him beside or his deceased brother but

report Ex.PW-3/1; hence create doubt regarding the

presence of complainant on the spot at the relevant

time of occurrence. (Reliance is placed on 2015

PCrLJ 554, 2017 PCrLJ Note 2 & 2017 PCrLJ

8.

Note 148)

12

nt'd Ord:

Page-2

fortunately he was escaped unhurt while his other t'd Ord: 11.10.2021 brother got hit and died on the spot. As per site plan, 'age-3 complainant and both the accused charged in present. case, were in close proximity with each other, while there is no hindrance inter-se, between the accused party and complainant but strangely he had not sustained any scratch, what to say about any firearm injury, despite the fact that he was at the mercy of the both the accused facing trial, who were having weapons with them and made firing as per report of complainant. It is admitted fact that complainant has never took the plea of taking shelter at the relevant time for his safety in his report Ex.PW-3/1, so it does not appeal to a prudent mind that two assailants, who were mentally and physically well prepared to take the life of brother of the complainant, would spare him on the spot, who was at their mercy and also would take the chance to leave evidence behind them or to leave. a risk of revenge in future. All these circumstances pointed to the fact that complainant was not present on the spot at the time of occurrence. (Reliance is placed on 2018 MLD 1635) As per record, neither eye witness/PW Adnan nor eye 9. witness/PW Adil were shown as the identifiers of the dead body of the deceased on the inquest report Ex PW-3/4 and also on Post-mortem report, while as per record, they both were present at the time of documents, which preparation those gives presumption of their absence from the spot & at the time of report also. (Reliance is made on 2020 PCrLJ Note 100) 10.

PW-1 who escorted the dead body to hospital for PM examination stated in his cross that he was present in emergency of hospital, wl¹en injured was brought to

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		(13)
	11 10 0000	hospital at 1710 hours, while as per record, occurrence
t'd Ord: age-4	11.10.2022	was took place at 2230 hours. Similarly, he also stated
		in cross that he handed over PM report and MLC to
-		I.O at about 2230 hours after an hour or half hour,
, ,		while as per record, occurrence took place at 2230
		hours and initial report was drafted at 2310 hours. So,
		it shows that his evidence is not line with record as
		available in casefile. PW-3 who drafted murasila Ex
		PW-3/1 admitted in his cross that he had not cited
		injured Asmat Ullah as rider of report as made by
• .		complainant while he was best witness of the
:		occurrence, while also a mitted in evidence that he
		had not written report of injured Asmat Ullah at the
		relevant time as he had stated that he along with
		complainant was hit by firing of some unknown
		persons, which means that injured of the same
		occurrence was having contradictory information
		regarding the occurrence but with malafide intention
		his information was ignored at the relevant time;
		hence create reasonable doubt with respect to
• •		authenticity of report made by complainant against the
D	-	accused facing trial. PW-3 also admitted in his
· Å	11/10	evidence regarding over writing made by him in the
. \	N A	report i.e. Ex PW-3/1, so also made the report of
-		complainant as doubtful.
. ,		11. Prosecution in the presen case also produced injured
		witness of the occurrenc's as PW-8 and in cross he
		stated that it was dark when the occurrence took place.
•	1 n x	He also admitted that at the relevant time most of the
•	10	people were armed with weapons while some
•	1 ju	proclaimed offenders duly armed were also present
		there. He admitted in his evidence that he had not seen
÷ .		the accused facing trial at the time of firing as well as
		in said music event. He clearly stated in his evidence
-		

that he does not charge anyone for commission of d Ord: 11.10.2022 offence as he had not seen anyone committed the ge-5 offence, while also admitted the fact that huge firing was made by absconders, prior to fire shots, which caused injuries to him. The evidence of star witness of the prosecution is totally contrary to the case of prosecution against the accused facing trial as his evidence completely shattered the case prosecution against the accused facing trial. To summarize the discussion above, this court has 12. reached the conclusion the alleged occurrence has not taken place as brought on record, and it seems that it was an unseen and un-witnessed occurrence wherein the unfortunate Fidak, brother of the complainant has lost his life, which the prosecution has miserably failed to prove against the accused facing trial. It is admitted fact on the record that no confession is made either of the accused facing trial before the competent court and no recovery or discovery was made on their pointation although they had remained in police custody. It is golden principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of doubt. If any reasonable doubt arises, the benefit of the same must be extended to accused not as a grace or concession, but as a matter of right. Similarly, it is also well-established principle of criminal justice that there is no need of so many doubts in the prosecution case; rather, any reasonable doubt arising out of the presecution evidence, pricking the judicious mind is sufficient for acquittal of the accused, whereas, the case in hand is pregnant with jumble of doubts and infirmities. Complainant and other witnesses of the complainant are not appearing hefore the court even though, they were directed many

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 d Ordi ge-6 11.10.2022 times for appearing before the court for recording their evidence through summon etc, but failed to do so, which shows that they have lost their interest in the prosecution of the accused facing trial. 13. Keeping in view the aboit-mentioned facts it is held that further proceedings it the instant case would be a thuile exercise because here could not arise any probability of conviction of the accused facing trial from the available record and evidence. 14. In wake of the foregoing discussion, the application of 265-K Cr.PC is hereby accepted and accused facing trial namely Asim and Kashif is no bail, so his sureties are released from jail if not required in any other case while accubed Kashif is on bail, so his sureties are released from jail if not required in any other case while accubed Kashif is on bail, so his sureties are released from jail if not required in any other case while accubed Kashif is on bail, so his sureties are released from jail if not required in any other case while accubed Kashif is on bail, so his sureties are released from jail if not required in any other case while accubed Kashif is on bail. 15. Case property be disposed of according to law, however, the same shall relatin intact till the expiry of mandatory period of app[*]al/revision. Police file be- returned along with a corple of this judgment whereas file of this Court be consigned to the Record Room after its compilation & completion. ANNOUNCEDE: 11/10/2022 7.0000 3 7.0000 3 7.0000 3 	· · · · ·		d51
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Office of the Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar

<u>ORDER</u>

14-61

/EF '

C.SI 61 12020

Date:

This order will dispose of the departmental proceedings against Constable Asim Khan No.536, of District Police Karak now on deputation to Elite Force Khyber Pakhtunkhwa.

As per information report of DSP Elite Force Kohat vide No. 284/R/EF, dated 26.09.2020, he was charged in case FIR No.608, dated 25.09.2020 U/S 302/324/34 PPC Police Station Karak District Karak and also remained absent from law full duty without any leave or prior permission w.e.from 25.09.2020 to 08.12.2020 (Total 74 days).

He was issued Charge Sheet alongwith Summary of Allegations vide this office No.11356-61/EF, dated 29.09.2020 and the then DSP Elite Force Kohat Region was appointed as enquiry officer. The Enquiry Officer recorded all the statements but the said Constable failed to appear before the enquiry officer nor submitted any reply of charge sheet. During the course of enquiry, it was transpired that he became absconder and did not join the investigation/enquiry process which shows his involment in the said case. Similarly a Final Show Cause Notes was issued to him but his reply was not recived in the stepulated period.

Therefore, I, Zaib Ullah Khan, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar being competent authority, impose major penalty of dismissal from service upon the defaulter official being involed in a heinous crime.

Moreover, his absence period i. 74 days is hereby treated as leave without pay.

(ZAIB ULLAH KHAN)PSP Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.

Copy of the above is forwarded to the:-

- 1. District Police Officer, Karak for information.
- 2. Deputy Superintendent of Police, Elite Force Kohat.
- 3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
- 4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
- 5: Incharg Kot/OHC/SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
- 6. FMC, Elite Force along with complete enquiry file Encls: (25) pages.

the Kpik born - ala - 1-1. خ . . كالبلو الاستخدين مع كرد مر مر مر مر مر الم^C رانام د مع الما - ح رس ولا اساس كو علو المم 213 ppc 302 324 - By - p2 25 01 کر اینے آپ کو ٹانون سے ۔ منسبت بج ما ہے کرد حداكما . حصّ لعد سام) في مسرح ال -lo ی سما دست ى دوران باقل كى اتماريرى خاب درسى كالد ما مال الم كسباية فرسع مرحم - مية مل حرمة معرد هذا محد مسلسل مس بالمرسلا مشرى برا ما مرزم و كسن توام المرزيري عالم 16- 54 من المحارب - در شی کاند - ماجب الد - ورس بهم الیا در قد الله - ورس ا- جرمته سامل كومالات خاب ستتين في كرك في توالم اردر غرى مرت المرابع مترم مل مس مرى مجا أرسي -دے بالا حداث کے من تظریر اور در در است استرعا جس سائل سے مسلین اور برای مرین دی وجیست بیست - سانل کرندان در محال کرندی با دست منام سانل مازنست دین کر درجه کا م م مرجزا ما جا و مريام متعلنة التوسر فاكالمال لف مدود 17 -22 13 JUDU عس لوز المرجري 154 536 i tulio un برسره می مرد کرد. mob-0334 4193252 Mob-0342-89214792

Diffee of the Adult IGP. Elline Force Kliyber Pakilluukhwa Peshawar

111211-28 EF

ORDER

This order will dispuse of departmental appeal submitted by Ex-FC Asim Khan No. 500 minst his major punishment of dismissil order issued by Deputy Commandant Elite Force vide order A 61/FF dated 05.01.2021 as he was charged in case FIR No. 608, dated 25.09.2020 USS 2444 PPC Police Station & District Karak.

Hence, the competent authority after perusal his appeal is hereby filed on the grounds of

time limitation i.e. time barred.

Order Announced!

) IEF

(MUHAMMAD WISAL FAKHAR SULTAN)PSP Addl: Inspector General of Police, Elite Force Khyber Pakhtunkhwa Peshnwar

13)

Dated OPTINE COL

-Copy of above is forwarded:-

Superintendent of Police, Elite Force, HQrs: Peshawar.

OASI (SRC Elite: Force, Peshawar.

FMC. Elite Force, alongwith complete enquiry file Encl: (44 pages). Hix-FC Asim Khan No. 536, through Reader SP Elite Force HQrs; Peshawar

يعدالت مع 2.023 منجاب العلا ت ورخ July 1 14 1915, Z مقدمه دعوكي جرم باعث تحريراً نكه مقدمه مندرجة عنوان بالإمين ايني طرف سے داسطے بيروى وجواب دہى دکل کاروائى متعلقه Je leven, Joint al آن مقام باز مقرر کر سے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز الم وَلِيل صاحب کوراضی ناملُکر نے ق تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور ہمیزت ڈ گری کرنے الجراء اور وصولی چیک و روپید ار عرضی دعویٰ اور درخواہت ہر قشم کی تصدیق زرای پر دستخط کرانے کا افتتیار ہوگا ۔ نیز صورت عدم پیروی یا دگری بکطرفہ ما ایک کی برا مدگ اور منسوخی نیز دائر کرنے اپیل تکرانی ونظر ثانی و پیروی کرنے کامختاج ہوگا۔ از بصورت ضرورت مقدمہ ندکور کے کل یا جزولی کاروائی کے واسط اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا۔ اور اصاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیار ات حاصل ہو ل کے اوراس کا ساختہ پر داختہ ملطور وقبول ہوگا دوران مقدمہ میں جوخرچہ ہر جانہ التوائے مقدمہ ہوں کے سب سے وہو گا ۔ کوئی تاریخ بیشی مقام دورہ پر ہو یا حد ہے اہم ہوتو وکیل صاحب یا بند ہوں گے۔ که پیروی ندکورکریں _لہذا وکالت نامه کھیدیا کہ سندر ہے۔ le over المرقوم <u>م اه</u> Acat