


25.02.2019

Counsel for the appellant present.

Learned counsel for the appellant has provided a copy of office order dated 18.01.2019, whereby the deducted salary of 43 days has been refunded to the appellant. Learned counsel states that in view of such developments he is under instructions to request for withdrawal of instant appeal.

Dismissed as withdrawn. File be consigned to record room.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.A smaller, more compact handwritten signature in black ink, located to the right of the main signature.



Chairman

ANNOUNCED
25.02.2019

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 82/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 18/1/2019 | <p style="text-align: center;">The appeal of Mr. Muhammad Waris Khan resubmitted today by Mr. Mufariq Shah Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 18/1/19</p> |
| 2- | 24/1/19 | <p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25-2-19</u></p> <p style="text-align: right;"> CHAIRMAN</p> |

The appeal of Mr. Muhammad Waris Khan son of Abdul Wahab r/o Doctor Colony LRH Peshawar received today i.e. on 17.01.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of biometric attendance sheet mentioned in para-5 of the memo of appeal (Annexure-E) is not attached with the appeal which may be placed on it.

No. 123 /S.T,

Dt. 17/01 /2019.

Amal
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Mufariq Shah Adv. Pesh.

Resubmitted
with desired correction.
Mufariq
18-01-2019



LADY READING HOSPITAL
MEDICAL TEACHING INSTITUTION, PESHAWAR

OFFICE ORDER

Whereas Mr. Muhammad Waris S/O Abdul Wahab Ward Orderly had performed his duty in the Institution and in pursuance to the Director General Health Services K.P. Office Order bearing No. 7018-20/Personnel dated 18.09.2018, 43 days deduction is hereby refunded to him.

Sd/XXX

Hospital Director
LRH-MTI Peshawar


41
NO. 1737 /LRH/E-IV

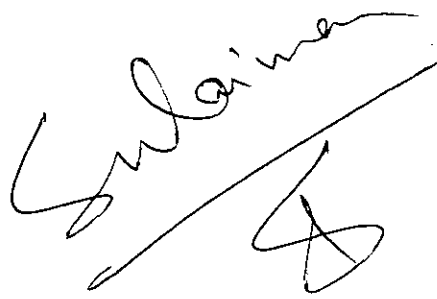
Dated 18/01/2019

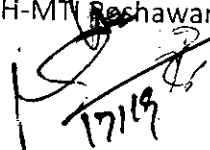
Copy forwarded to:-

1. The Budget and Accounts Officer, LRH-MTI Peshawar.
2. Facility Manager, MTI.LRH Peshawar.
3. Associate Hospital Director, LRH-MTI Peshawar.
4. Secretary to Hospital Director, MTI.LRH Peshawar.
5. Official concerned.

For information and n/action.


Director Human Resources
LRH-MTI Peshawar




17/19

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

Service Appeal No: 82 /2019

Muhammad Waris *khan*

Verses

Government of KPK and others

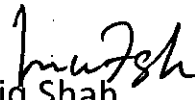
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| S.No | Description | Annexure | Page No. |
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| 2. | affidavit | | 4 |
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| 4. | Copy of the departmental appeal | "B" | 7 - 8 |
| 5. | Copy of impugn order | "C" | 9 |
| 6. | Copy of application/department appeal | "D" | 10 |
| 7. | Copy of biometric attendance | "E" | |
| 8. | Copy of order by inquiry officer | "E" | 11 |
| 9. | Wakalatnama. | | 12 |


Appellant

Dated: 17-01-2019

Through


Mufariq Shah
Advocate High Court,
Peshawar.
Office No. 15, Hazrat Shah Plaza,
Shoba Bazar, Peshawar.
Mobile No: 0314-9175656
E-mail:
mufariq_shah@hotmail.com

①

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

Service Appeal No 82 /2019

Muhammad Waris Khan S/O Abdul Wahab R/O Presently flat no. 38,
Mohalla Doctors Colony, LRH block 7, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 75

(Appellants) dated 17-1-2019

VERSUS

1. Government of Khyber PukhtunKhwa through Secretary Health Department, Peshawar.
2. Leading Reading Hospital Peshawar through its Director Hospital.
3. Director General Health Services Khyber PukhtunKhwa, Peshawar.

(Respondents)

Appeal under section 4 of the Khyber Pakhtunkhwa services Tribunal Act 1974 against the impugn Order, Ref no. 0970/AHD/PA/LRH, dated 19/02/2018. Whereby the salary of 43 days of the appellant has been deducted without any plausible explanation and till yet the departmental appeal has not been decided.

Filed to-day

Registrar

Prayer:

On acceptance of the instant service appeal in hand the impugn order, Ref no 0970/AHD/PA/LRH, dated 19-02-2018 may please be set aside / turn down and the deducted salary of the appellant may kindly be reimbursed back to the appellants.

Respectfully Sheweth;

The facts giving rise to the instant appeal:

ON FACTS:

1. That the appellant is a provincial civil servant performing his duties in LRH hospital, Peshawar as orderly ward. (Copy of the service cards & CNIC of the appellant is attached as Annexure 'A')

Re-submitted to-day and filed.

Registrar 17/1/19

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2. That the appellant was relieved off his service and his salary was stopped and transferred him to the office of the respondent no. 3, who while accepting the appeal of the appellant transferred him back to respondent no. 2 hospital. (Copy of the decided departmental appeal attached as annexure 'B')
3. That the respondent no. 2 while again issuing the release order, ref no. 0970/AHD/PA/LRH on dated 19-02-2018, deducted 43 days salary from appellant and consequently the same is deducting monthly from his pay roll. (Copy of impugn order annexure 'C')
4. That consequently on dated 15-03-2018 the appellant duly and within time submitted their applications/departmental appeals for initiating departmental inquiry regarding the deduction of his salary. (Copy of application/department appeal attached as annexure 'D')
5. That during all this time, for which the salary of the appellant is deducted, they were in full attendance and no reason for the deduction of pay has ever been given to the appellants. (Copy of ~~Attendance sheet of appellant~~)
6. That it is also pertinent to mention that an inquiry officer duly checked the biometric attendance of the appellant and found him in full attendance, hence issued an order no. 7018-20 on dated 18-09-2018 for the reimbursement of the 43 days deducted salary, but still that order has not been complied. (Copy of order is attached as 'E')
7. That feeling aggrieved by the impugn order as mentioned in the heading of this appeal, against which departmental appeal was filed by the appellant but till date no plausible explanation or order has been made, hence the instant appeal on the following grounds amongst others:


GROUNDS:

- A. The illegal and malafide act of the respondent no. 2, loudly speaks that he treats the appellant as according to his ill will, in a very discriminating manner, which is not warranted in the eyes of law, also the constitution doesn't permit such discrimination.
- A. That the appellant has not been treated at par with the rest of the candidates as envisaged in article 4 of the constitution, hence the respondent no. 2 knowingly and willfully abrogated the constitution.

3

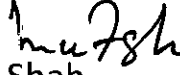
- B. That as per Article 25 of the constitution of 1973 of Islamic republic of Pakistan, there shall not be any discrimination in between the citizen of Pakistan but in here the whole process was done partially and according to the will of the respondent no. 2.
- C. That no charge sheet and statement of allegation and final show cause notice was issued to the appellant.
- D. That respondent no. 2 has not treated the appellant in accordance with Law, rules, and policy on subject and acted in violation of the article 4 of the constitution of 1973 of the Islamic republic of Pakistan.
- E. That a well settled principle of law "Audialtram Partem" has been violated, this principle of law was always deemed to have embodied in every statute even though there was no express or specific provision in this regard. An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order reliance is placed on 2006 PLC (CS) 1140. As no proper hearing has been afforded to the appellant before issuing of the impugned order therefore on this score the said order is to be considered null and void.
- F. That the appellant would like to seek the permission of the honorable Tribunal to add more grounds at the time of arguments.

While considering the above submission the appeal in hand may please be accepted /allowed and the deducted salary of the appellants may kindly be reimbursed.


Appellant
(Muhammad Waris Khan)

Dated: 17-01-2019

Through


Mufariq Shah
Advocate High Court,
Peshawar.
Office No. 15, Hazrat Shah Plaza,
Shoba Bazar, Peshawar.
Mobile No: 0314-9175656
E-mail: mufariq_shah@hotmail.com

(4)

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

Service Appeal No _____/2019

Muhammad Waris Khan

(Appellant)

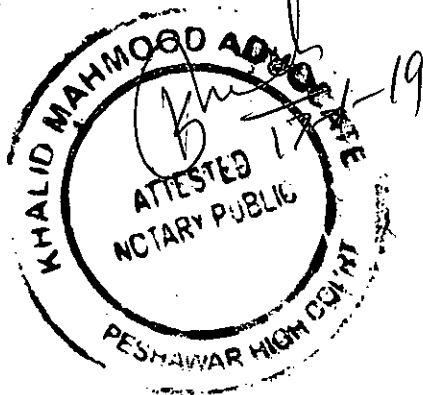
VERSUS

Government of KPK and Others

(Respondents)

Affidavit

I, Muhammad Waris Khan S/O Abdul Wahab R/O Presently flat no. 38, Mohalla Doctors Colony, LRH block 7, Peshawar, do hereby solemnly affirm and declare on oath, that the contents of this service appeal is correct to the best of my knowledge and belief and nothing has been concealed from this honorable Service Tribunal.



Deponent no: MA

CNIC: 17301-7028186-9

Dated; 17-01-2019

(7)

DIRECTORATE GENERAL HEALTH SERVICES

KHYBER PAKHTUN KHWA PESHAWAR



E-Mail Address: nwfdghs@yahoo.com office Ph# 091-9210269 Exchange# 091-9210187, 9210196 Fax # 091-9210230
 No. 686-709 / Personnel Dated: 5 / 01 / 2018

To,

1. Hospital Director MTI/LRH Peshawar.
2. Hospital Director MTI/KTH Peshawar.

Subject: **DEPARTMENTAL APPEALS AGAINST RELIEVING ORDERS OF CLASS-IV STAFF OF MTI/LRH STAFF.**

Sir,

Kindly refer to your miscellaneous relieving orders regarding Civil Servant Class-IV who were initially appointed by the competent authority of your MTI/LRH Peshawar in past to report at DGHS office for their further posting, along-with their Departmental Appeals against their relieving orders.

The following Class-IV submitted Departmental Appeals/arrival reports.

| S.No. | Name of Appellant | Relieving order.No. |
|-------|--|---------------------------------|
| 1 | Roaid Khan S/o Sher Baz Khan Ward orderly | 1424-31/HD/LRH dated 15.12.2017 |
| 2 | Muhabat Khan S/o Hasham Khan Ward orderly | 1432-39/HD/LRH dated 15.12.2017 |
| 3 | Noor Rahim S/o Abdul Kabir Ward orderly | 1416-23/HD/LRH dated 15.12.2017 |
| 4 | Munawar Lal S/o Lal Din Sweeper | 1456-63/HD/LRH dated 15.12.2017 |
| 5 | Muhammad Ali S/o Lal Khan Ward orderly | 1392-99/HD/LRH dated 15.12.2017 |
| 6 | Hayat Khan S/o Taza Khan Behishti | 1628-35/HD/LRH dated 21.12.2017 |
| 7 | Faramosh S/o Dost Muhammad W/orderly | 1409-16/HD/LRH dated 15.12.2017 |
| 8 | Muhammad Asif S/o Muhammad Tariq Naib Qasid | 1644-51/HD/LRH dated 21.12.2017 |
| 9 | Mr. Ishaq Bota S/o Buta Masih Sweeper | 1448-55/HD/LRH dated 15.12.2017 |
| 10 | Tahir Khan S/o Syed Khan Dhobi | 1620-27/HD/LRH dated 21.12.2017 |
| 11 | Fazal Maula S/o Fazal Rahim Attendant | 1634-43/HD/LRH dated 21.12.2017 |
| 12 | Sartaj S/o Muhammd Khan Lift Operator | 1501-08/HD/LRH dated 18.12.2017 |
| 13 | Shahid Masih S/o Waris Masih Sweeper | 1440-47/HD/LRH dated 15.12.2017 |
| 14 | Muhammad Waris S/o Abdul Wahab W/orderly/ | 1400-08/HD/LRH dated 15.12.2017 |
| 15 | Mr. Hamyun S/O Ghulam Rabani Ward Orderly | 51240-57/KTH/HRD dated 22.12.17 |
| 16 | Mr. Niaz Muhammad S/O Sher Muhammad Masalchi | 51240-57/KTH/HRD dated 22.12.17 |
| 17 | Mr. Yaqoob Masih S/O Rehmat Masih Sweeper | 51240-57/KTH/HRD dated 22.12.17 |
| 18 | Mr. Rooh ul Amin S/O Gul Habib M. Sweeper | 51240-57/KTH/HRD dated 22.12.17 |

Attested

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I Director General Health Services Khyber Pakhtunkhwa Peshawar being competent authority for considering departmental appeals of Class-IV Civil Servant who were initially appointed by competent authority of concerned MTI/ LRH in past, and accept all above referred departmental appeals and direct all the Class-IV to report back to MTI/LRH & KTH for their duties on the following amongst other grounds:-

- i. The above named Class-IV Civil Servants were appointed by your good self in past and they served under your control since their initial appointment according to relevant Law & Rules of initial recruitment.
- ii. According to Khyber Pakhtunkhwa Civil Servant Act 1973, and APT Rules 1989 the Class-IV shall be appointed on local basis and they cannot be inter District transferred because to avoid violation of permanent residential rights of other Districts for their appointment. Ex-cadre transfer/ appointment/ deputation has already been banned by Supreme Court of Pakistan 2013 SCMR 1357.
- iii. Mostly above named Class-IV having domicile of Peshawar and other were appointed on Provincial based Hospital against their quota. According to relevant

8

entitled for 25% Son quota of retired employees against the Class-IV post in same Hospital.

- iv. The Section-16 of MTI Act 2015 is also allowed to serve name in their concerned MTI Hospital on the term & condition of Civil Servant. The Section 11A Khyber Pakhtunkhwa Civil Servant Act 1973 is not applicable in this case.
- v. However, the authority of MTIs can initiate disciplinary proceeding against Class-IV found of mis-conduct and any Class-IV/official if himself apply for his transfer it will be consider as per Law and according to availability of vacant post.
- vi. They cannot be relieved prior obtaining NOC of the undersigned/ competent authority to adjust them further, also there is no single vacant post of Class-IV is available in District Peshawar and their adjacent Districts, so their relieving orders and stopping of their salaries is illegal and violation of their fundamental right.
- vii. Similarly, the other 09-MTIs of Khyber Pakhtunkhwa are also relieving their Class-IV without any reason if this practice will continue all over the Province will lead to Provincial exchequer to an un-manageable situation.
- viii. Mostly above named Class-IV approached Peshawar High Court Peshawar in writ petition No. 1914-P/2016, who in decision dated 17.11.2016 has also directed to adjust them locally. But as narrated above in para-IV there is no single vacant post in District Peshawar or their adjacent District even in all over the Khyber Pakhtunkhwa because of large number of appointments of Class-IV by the present Government, we are also facing litigation about them.
- ix. The Peshawar High Court Peshawar D.I.Khan Bench in writ petition No.555-D/2017 has decided on 15.11.2017 (copy attached). The last sentence of para-5 is hereby reproduced below:-

"It clearly indicates that for all intents and purposes, the petitioner was a Government servant according to his appointment order and was to be dealt with in accordance with Government rules and MTI has nothing to do with his services particularly when the petitioner has not joined MTI and thus, the impugned order dated 09.05.2017 is not sustainable".

- x. The Service Tribunal Khyber Pakhtunkhwa has also decided the service appeal No. 480-P/2017 dated 15.12.2017 in similar nature case (copy attached).
- xi. Supreme Court of Pakistan in 2009 SCMR 1, has decided that when a question of law pertaining to terms and conditions of Civil Servant has been decided by Service Tribunal and Supreme Court of Pakistan its benefits shall be extended those Civil Servants who were not party in litigation process to avoid unnecessary litigation.

In the light of all above mentioned, on acceptance of their Departmental appeals you are requested to withdraw above mentioned orders in column 3 of above table and release their salaries with all arrears.


DIRECTOR GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR.

Attested
Munir


5/11/18

C.c

1. Secretary to Government of Khyber Pakhtunkhwa Health Department Peshawar w/r to discussion regarding subject cited above for information and further necessary action please.
2. All concerned Class-IV appellants mentioned above. They are directed to report to their respective original place of posting.



OFFICE OF THE ASSOCIATE HOSPITAL DIRECTOR

LADY READING HOSPITAL, MEDICAL TEACHING INSTITUTION, PESHAWAR
Phone # +92-91-9211430 Ext: 185 Facsimile: 0992-919211401 www.lrh.gov.pk

Ref No 0970/AHD/PA/LRH

Dated: 19/02/2018

To,

The Hospital Director
Lady Reading Hospital, MTI
Peshawar

Subject: RELEASE OF SALARY OF CLASS-IV

It is for your information that all the requirements are fulfilled by the Class-IV relieved staff and their salaries may please be released as mentioned below.

| S. No. | NAME | FATHER NAME | DESIGNATION | REMARKS |
|--------|--------------------|---------------|---------------|-------------------------------|
| 1. | Mr. Sartaj | Muhammad Khan | Lift Operator | Release Full |
| 2. | Mr. Shahid Masih | Waris Masih | Sweeper | Release Full |
| 3. | Mr. Ishaq Buta | Buta Masih | Sweeper | Release Full |
| 4. | Mr. Munawar Lal | Lal Din | Sweeper | Release Full |
| 5. | Mr. Tahir Khan | Syed Khan | Dhobi | Release Full |
| 6. | Mr. Muhammad Waris | Abdul Wahab | Ward Orderly | 43 Days salary to be Deducted |
| 7. | Mr. Hayat Khan | Taza Khan | Behishti | Release Full |
| 8. | Mr. Fazle Moula | Fazal Rahim | Attendant | Release Full |
| 9. | Mr. Noor Rahim | Abdul Kabeer | Ward Orderly | Release Full |
| 10. | Mr. Mahabat Khan | Hasham Khan | Ward Orderly | Release Full |
| 11. | Mr. Asif Khan | Alamzeb | Naib Qasid | Release Full |
| 12. | Mr. Ghulam Hussain | Ghulam Sarwar | Cook | 71 Days salary to be Deducted |

No. 0971-0976 /AHD/PA/LRH

Copy forwarded to information and necessary action:-

1. Director Human Resource
2. Director Finance
3. Assistant Director Legal
4. Budget & Accounts Officer
5. PA to Associate Hospital Director
6. Dealing Assistant Class-IV

-----Sd-----
ASSOCIATE HOSPITAL DIRECTOR
Lady Reading Hospital, MTI Peshawar
Dated: 20/02/2018

LRH, MTI, Peshawar
LRH, MTI, Peshawar
LRH, MTI, Peshawar
LRH, MTI, Peshawar
LRH, MTI, Peshawar
LRH, MTI, Peshawar

ASSOCIATE HOSPITAL DIRECTOR
Lady Reading Hospital, MTI Peshawar

Attested

[Signature]

20/02/18

20/02/18

عقد سب جناب ہاسپٹل ڈائریکٹر کیڈی ریڈنگ ہسپتال ایم۔ ٹی۔ آئی اینڈ

15

عوان برائے 43 دنوں کی نمنواں

میں لٹوٹی محال کی جائے

حوالہ نمبر 0976-0971 مورخہ

جناب عالی!

محبت احترام کے ساتھ درخواست پیش

کی جا رہی ہے کہ آپ صاحبان کی جانب سے عرصہ حوالہ نمبر

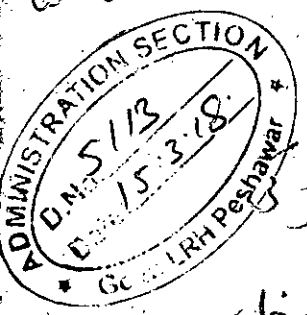
0971-0976 مورخہ 20/18 مورخہ قبول ہوا زیر دستگیری اسوی

ایٹ ایچ ڈی جس میں سائل کی نمنواں میں سے 43 دنوں کی لٹوٹی

کی گئی ہے جبکہ سائل نے کسی جسم کی غیر حاضری کا نہ کرتے ہوئے ثابت

فرق شناسی سے آج تک ڈیوٹی سر انجام دے رہا ہے۔

copy



البتہ مورخہ 15/12 کو ہاسپٹل ڈائریکٹر

Attested

جانب سے حوالہ نمبر 1400-08/HD میں سائل کو سہماں سے بے دخل

کرنے کی نباد کے احکامات جاری کیے گئے لیکن کسی وجہ سے جس

پر سائل نے مخالفت کی کہ وہ اسل برائے ڈائریکٹر سے ہر ورس کوئی

تھی جسے نتیجہ میں سائل کی اسل منظور کر کے سائل کا تبادلہ منسوخ

کرنے کا سبب نمنواں کے ساتھ ساتھ تمام تقابلیات کا ادا کرنے کے

احکامات جاری ہوئے ہیں تاکہ سائل کی درخواست کے ساتھ لف ہے

لہذا آپ صاحبان سے فرما رہی ہے کہ

ڈائریکٹر ہسپتال سے اسل کی جانب سے آرڈر کے بعد نمنواں میں لٹوٹی

نا ادا کی جا رہی ہے آپ صاحبان سے درخواست ہے کہ 43 دن کی لٹوٹی

کے آرڈر منسوخ کرنے کے شکریہ کا موقع دیں عین نو ارنس ہوئی نام محمد وارث
(کامی برائے اطلاع و ضروری کارروائی) اہلکارین آف افسار

بعدالت

Before The Honorable Services
Tribunal Peshawar, Kpk

2 منجانب

محمد وارث خان بنام گورنمنٹ آف Kpk
دفعہ

مورخہ
مقدمہ
دعوی
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی وجواب دہی وکل کاروائی متعلقہ
آن مقام پشاور کیلئے صنعتی کاروبار الا وکیل
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعوی اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعوی اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری کی طرفہ یا اپیل کی برابری اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
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 بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا سائنس
پر واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیروی
نہ کو کر کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندر ہے۔

محمد وارث خان ولو عبدالویاب کیلئے لکھن 17

Handwritten signature

المرقوم 17
ناہ 17 جولائی 2019

العبد _____ واہ العبد _____

بمقام پشاور کے لئے منظور ہے۔

Accepted
Handwritten signature