


FORM OF ORDERSHEET

Court of _____


Case No. _____

654 / 2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.03.2023	<p>As per direction of the Worthy Chairman the present appeal is fixed for preliminary hearing and decision on office objections before Single Bench at Peshawar on _____. Counsel for the appellant be informed accordingly.</p> <p style="text-align: right;"> REGISTRAR</p>

24

The objection of the office and
reply of counsel for the appellant is
submitted for order please.



22/3/2023

Honble Chairman

Be

2/12

2/10


27/3/23

The appeal of Mr. Ziur Rehman son of Fazal Rehman r/o Kukari Swat. Ex-Constable no.3039 received today i.e. on 20.03.2023 is incomplete on the following score which is returned to the co Counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 3- Annexures-B & C of the appeal are illegible which may be replaced by legible/better one.

No. 992 /S.T.

Dt. 21/3 /2023

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

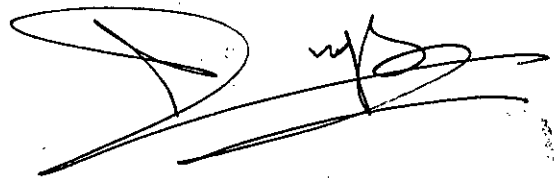
Mr. Saad Ullah Khan Marwat Adv.
High Court at Peshawar.

Respected Sir

Rest as for objection No 1² is covered
no record is available with the appellant
nor served upon him.

Please put before the court.

State kindly club with the
identical appeal A.No. 590/23
Maaz Khan & 2 others vs DPO etc.



21-03-23

BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL,
PESHAWAR

CM No. /2023

IN

S. A. No. /2023

Zia-ur-Rehman

versus

DPO & Others

APPLICATION FOR HEARING OF THE SUBJECT APPEAL AT THE
PRINCIPAL SEAT:


Respectfully Sheweth,

1. That subject appeal is pending disposal before this hon'ble Tribunal and no date of hearing is yet fixed for hearing.
2. That the subject matter pertains to retrospective effect and other similar numerous appeals are also pending for hearing at Principal seat.
3. That in order to avoid complication and difference of opinion, the subject appeal pertaining to Swat jurisdiction is also to be heard at principal seat.

It is, therefore, most humbly requested that the application be accepted as prayed for.

Appellant

Through


Saadullah Khan Marwat
Advocate

Dated. 20-03-2023

BEFORE THE KPK SERVICE TRIBUNAL PESHAWARS.A No. 654 /2023

Zia-ur-Rehman

versus

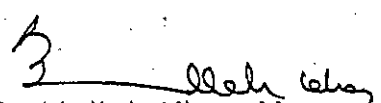
DPO & Others

I N D E X

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-3
2.	Medical receipts	"A"	4-7
3.	Dismissal order dated 01-12-2014	"B"	8
4.	Rejection order dated 07-07-2015	"C"	9
5.	Judgment in similar case	"D"	10-13
6.	Condonation Application		14

Appellant

Through


 Saadullah Khan Marwat
 Advocate.
 21-A Nasir Mansion,
 Shoba Bazaar, Peshawar.
 Ph: 0300-5872676
 0311-9266609

Dated.08-03-2023

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 654 /2023

Zia-ur-Rehman S/o. Fazal Rehman,
 R/o Kukari, Swat,
 Ex-Constable No. 3039,
 Police Post Gulwari, Swat Appellant

VERSUS

1. District Police Officer, Swat.
2. Regional Police Officer, Malakand,
 At Saidu Sharif Swat Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
 1974 AGAINST OB NO. 209 DATED 01-12-2014 OF
 R. NO. 1 WHEREBY APPELLANT WAS DISMISSED
 FROM SERVICE ON THE SCORE OF ABSENCE FROM
 DUTY OR OFFICE ORDER NO. 5483 / E DATED 07-
 07-2015 OF R. NO. 2 WHEREBY DEPARTMENTAL
 APPEAL OF APPELLANT WAS FILED:**

⊕<=>⊕<=>⊕<=>⊕<=>⊕

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Constable in the year 2010 and served the department to the best of his ability and with devotion.
2. That appellant suddenly became ill and was recommended for complete bed rest for 10 days. (Copy as annex "A")
3. That without any enquiry, appellant was dismissed from service by R. No. 01 vide order dated 01-12-2014. (Copy as Annex "B")

4. That appellant submitted representation before R. No. 2 for reinstatement in service which was rejected on 07-07-2015. (Copy as annex "C")
5. That similar question of Law and Facts came up for consideration before the hon'ble Tribunal, which appeals were accepted vide judgment dated 07-12-2017. Even the department herself has reinstated such like employees numbering in hundreds and thousands. (Copies as annex "D")

Hence this appeal, inter alia, on the following grounds:-

GROUND S

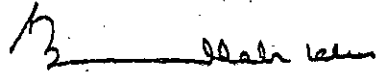
- a. That appellant never absented from duty willfully but he was ill as stated above. He submitted illness prescriptions to the office of R. No. 01 but no notice of the same was taken.
- b. That appellant was neither served with any Notice, Charge Sheet, Final Show Cause Notice, so he was condemned unheard.
- c. That neither any enquiry was conducted nor any statement was recorded in presence of appellant nor he was afforded opportunity of cross-examination.
- d. That absence, if any, and that too not willful, does not constitute misconduct. The impugned orders are not per the mandate of Law, so are based on malafide and requires interference.

It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 01-12-2014, and 07-07-2015 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.



Appellant

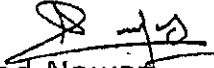
Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal


Amjad Nawaz
Advocates,

Dated 08-03-2023

AFFIDAVIT

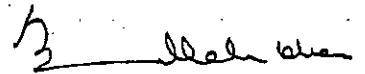
I, Zia-ur-Rehman S/o Fazal Rehman, R/o Kukari, Swat, Ex-Constable No. 3039, Police Post Gulwari, Swat (Appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief.



DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Service Appeal has earlier been filed by the appellant before this Hon'ble Tribunal.



ADVOCATE

SAIDU TEACHING HOSPITAL

SAIDU SHARIF SWAT

MEDICAL UNIT

Professor & Head

Dr. Aziz Ahmed

MBBS, DTM, MRCP, FRCP

Associate Professor

Dr. Purdil Khan

MBBS, MRCP (UK) MRCP (Ire)

Registrar

Dr. Malak Saadullah Khan

Associate Professors

Dr. Bacha Amin Khan

MBBS, FCPS

Medical Officers

Dr. Munim

MBBS

Dr. Fazal Akbar

MBBS, FCPS

Dr. Muhammad Ali

MBBS

Dr. Amin Ullah

MBBS, FCPS

Dr. Fazal Rabbi

MBBS

Patient's Name: Zaid Ali Khan
Age 26 Yrs Sex M
Address KANARAT SWAT
D/A 2014 D/D 27/11/2014
Yearly No 9940 B.No 20
Disease Acute Myocardial Infarction
Prepared By R. Khan Checked By R. Khan



☆ غیر ضروری انجکشن اور بلاضورت ڈرپ نہ لگوائیں۔

☆ ڈاکٹر کے مشورے کے بغیر ٹیسٹ اور انتقال خون نہ کریں۔

☆ ڈسپوزیبل سرنج کا دوبارہ استعمال نہ کریں۔

ASA

CONDITION ON ADMISSION

They patient is come to
Hospital some time and
Whitening with some fever
and stomach burning
full body feeling chill and
with urticaria

Omezol
(Omeprazole)
Mylan Specialty Products
A Division of Novartis

Ometem
Mylan Specialty Products
A Division of Novartis

IZILON
(Moxifloxacin)
Mylan Specialty Products
A Division of Novartis

INVESTIGATIONS

BLOOD COMPLETE:

Hb	10.4	Gm%
TLC	12	Pre Cm
DLC P	51	%
L	54	%
M	43	%
E	40	%
ESR	13	1st Hour
Blood Urea	79	mg%
Blood Sugar	14	mg%
S. Creatinine	10	mg%

URINE R/E

Reaction	Nil
Sugar	83
Albumin	Nil
RBC	10-15
WBC	Nil
Caste	10-15
Pus Cells	15-12

SPECIAL INVESTIGATION

- USound IPunc
- SIC/Sound Abdomen
- MRI Abdomen
- SGPT
- SBR
- LFTS
- Vitamin D

HOSPITAL TREATMENT

- inj = Ranitid 1500 IV BD
- inj = Falsyl 200 ml IV BD
- inj = Remy 300 mg BD
- inj = Veran 800
- inj = Grammat 800
- inj = Zentac IV BD
- inj = Ritsik 40 mg BD
- inj = Gynastil 500 BD IV

ORDER

B 8

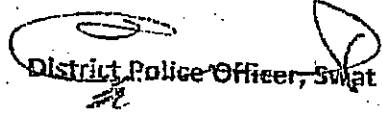
3-12-24

This order will dispose off the departmental enquiry against Constable Zia-ur-Rahman No.3039 (Now Elite Force) who while posted to Police Post (Bawalal Police Station Chuprial has absented himself from duty without prior permission or leave vide DD No.18 with effect from 06-09-2014 for a total of 01 month, 23 days, 17 hours and 40 minutes.

He was issued Charge Sheet alongwith statement of Allegations and SDPO/Kabal Circle was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent officer Constable Zia-ur-Rahman No.3039 and recorded the statements of all concerned officers. He has provided ample opportunity to the delinquent officer to defend the absence rendered by him. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent Officer for punishment. He was heard in Orderly Room. However, he could not present any plausible defense for his unlawful absence.

Having perused his service record, it was patently evident that the delinquent officer Constable Zia-ur-Rahman No.3039 is addicted to chronic absentee and is not interested to continue his service. Foregoing in view the undersigned is of considered opinion that there are no chances that Constable Zia-ur-Rahman No.3039 can become an efficient Police Officer. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in me undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar, S.St, P.S.P, District Police Officer, Swat as a competent authority, am constrained to award him the punishment of Dismissal from Service.

Order announced.


District Police Officer, Swat

O.B. No. 209

Dated 01 / 12 / 2014.

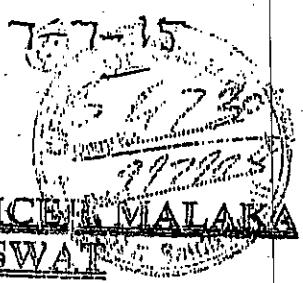
OFFICE OF THE DISTRICT POLICE OFFICER, SWAT.

No. _____ /E, dated Gulkada the _____ /2014.

Copy of above is submitted to the Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar for I/O information and further necessary action please.


District Police Officer, Swat

C 9



**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND
REGION, AT SAIDU SHARIF SWAT**

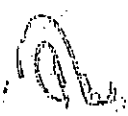
ORDER:

This order will dispose off appeal of Ex-Constable Zia Ur Rahman No. 3039 Swat District for reinstatement in service.

Brief facts of the case are that Ex-Constable Zia Ur Rahman No. 3039 who posted to Police Post Gwalani Police Station, Chupriyal absented from duty with effect from 06/09/2014 to 01/12/2014 total one month and 25 days without prior permission of his superiors. He was issued charge sheet alongwith statement of allegations and SDO/ Kabal Circle was deputed as Enquiry Officer. The Enquiry Officer held him responsible and recommended the delinquent officer for punishment. He was heard in Orderly Room by District Police Officer, Swat but he could not produce any plausible defence for his unlawful absence. Hence, the District Police Officer, Swat dismissed him from service vide C.O. No. 209 dated 01/12/2014.

He was called in Orderly Room on 23/06/2015 and heard in person. The appellant produced Medical Discharge Slip before the undersigned where in the dates were altered over writing. So it was sent to the Medical Superintendent, Saidu Teaching Hospital, Saidu Sharif Swat for verification vide this office Memo: No. 5234/E, dated 26/06/2015. The Medical Superintendent, Saidu Teaching Hospital, Saidu Sharif Swat vide his office letter No. 6812/G, dated 02/07/2015 has intimated that the said Discharge Slip is bogus and not issued by the Saidu Teaching Hospital, Swat. Therefore, I uphold the order of District Police Officer, Swat, whereby the appellant has been awarded punishment of dismissal from service. His appeal is filed.

Order announced


(AZAM KHAN) TST, PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 5483 /E,

Dated 7-7- /2015.

Copy alongwith a copy of discharge slip is sent to District Police Officer, Swat with the direction to register a criminal case against the above named applicant at Police Station Saidu Sharif under intimation to this office.

EMD (G)

*EC / SHO PS Saidu Sharif.
for intimation.*

*SP Swat.
07/07/15*

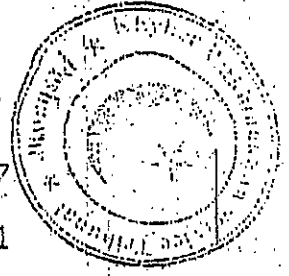
D 10

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 1420/2017

Date of Institution ... 13.12.2017

Date of Decision ... 07.12.2021



Asrat Ullah S/O Zarwal Khan, R/O Zahid Abad Township, Bannu,
Ex-Constable No. 1381, Police Station, Township, Bannu.

... (Appellant)

VERSUS

District Police Officer, Bannu and two others.

... (Respondents)

MR. ARBAB SAIF-UL-KAMAL,
Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that the appellant while serving as Constable in Police Station Township District Bannu, was proceeded against departmentally on the allegations of his absence from duty and was dismissed from service vide order dated 30.12.2009. The departmental appeal of the appellant was disposed by the Regional Police Officer vide order dated 18.10.2017 with the remarks as seen and filed. The appellant then submitted revision petition to the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was rejected on.

ATTESTED

Khyber Pakhtunkhwa
Services Tribunal
Peshawar

11

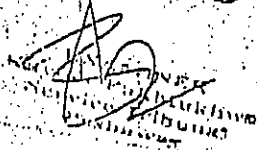
03.11.2017 and intimation was conveyed to the appellant through cell phone on 14.11.2017, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the absence of the appellant from duty was not willful rather he was unable to attend his duty due to severe illness; that the prescriptions regarding illness of the appellant were handed over to the departmental Authority, however the appellate Authority did not consider the plea of the appellant and decided the departmental appeal in a cursory manner, and no charge sheet or statement of allegations as well as final show-cause notice was issued to the appellant and whole of the proceedings were conducted at the back of the appellant without affording him any opportunity of self defense or personal hearing; that the appellant was dismissed from service vide order dated 30.12.2009 with retrospective effect from 24.10.2008, therefore, the impugned order is void ab-initio; hence no limitation would run against the same; that the charge sheet as well as statement of allegations and final show-cause notice was not at all served upon the appellant and even no publication regarding the alleged absence of the appellant was made in the newspaper; that the impugned order being wrong and illegal may be set-aside and the appellant may be reinstated into service with all back benefits. Reliance was placed on 2019 SCMR 648 and 2000 SCMR 75 as well as judgment dated 07.12.2017 passed by this Tribunal in Service Appeal No. 967/2016.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant remained absent from duty without leave or seeking permission of the competent Authority, therefore, disciplinary action was taken against him; that charge sheet as well as statement of allegations were issued to the appellant, however he did not

TESTED


District Attorney
District Court
District


bother to attend the inquiry proceedings; that on completion of the inquiry, final show-cause notice was issued to the appellant, however he failed to submit the reply of the same, therefore, he has rightly been awarded the punishment of dismissal from service; that the departmental appeal of the appellant was time barred, therefore, his service appeal is not maintainable; that the inquiry proceedings were conducted by complying all legal and codal formalities, therefore, the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he absented himself from duty with effect from 24.10.2008 without any leave or permission from the competent Authority. Charge sheet as well as statement of allegations were issued to the appellant and DSP Headquarter Bannu was appointed as inquiry officer for conducting inquiry against the appellant under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Nothing is available on the record which could show that the charge sheet, statement of allegations as well as final show-cause notice were served upon the appellant. The respondents did not comply the relevant codal formalities for serving of charge sheet, statement of allegations as well as final show-cause notice upon the appellant, therefore, the ex-parte action taken against the appellant by depriving him of self defense and personal hearing is void ab-initio and nullity in the eye of law.

7. Moreover, the appellant agitated in his departmental appeal that he has not been treated in accordance with law and that his absence was not willful, rather he was unable to attend his duty being suffering from severe illness of jaundice. The appellate Authority, however dismissed the appeal in a cursory manner without considering the point agitated by the

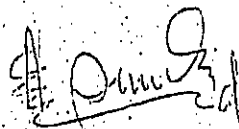
ATTESTED


S. ADINER
Secretary, Khyber Pakhtunkhwa
Bannu

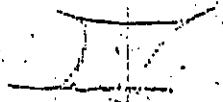
appellant in his appeal. In these circumstances, in order to meet the ends of justice, conducting of de-novo inquiry into the matter is necessary.

8. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry, in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to final outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

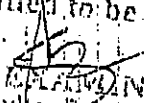
ANNOUNCED
07.12.2021



(AHMAD SULTAN TAREEN)
CHAIRMAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 20/4/22
Number of Words 1600
Copying Fee 18/-
Urgent
Total 18/-
Name of Copyist
Date of Copy/Receipt of Copy 21/5/22
Date of Delivery of Copy 21/5/22

appellant in his appeal. In these circumstances, in order to meet the ends of justice, conducting of de-novo inquiry into the matter is necessary.

8. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to final outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.12.2021

(AHMAD SULTAN TAREEN)
CHAIRMAN

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
Peshawar

Date of Presentation of Application 20/4/22
Number of Words 1600
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Number of Copies 1
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Date of Delivery of Copy 21/5/22

14

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A
No. _____/2023

Zir-ur-Rehman

Versus

DPO & Another

**APPLICATION FOR CONDONATION OF
DELAY, IF ANY.**

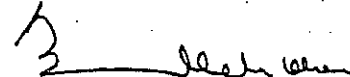
Respectfully Sheweth:

1. That the subject appeal is filed in this hon'able Tribunal.
2. That the delay was not willful but was due illness.
3. That the apex Supreme Court held time and again in its judgments that vested rights shall not be killed on the score of limitation and cases be decided on merit.

It is, therefore, most humbly requested that delay, if any, be condoned in the best interest of justice.

Applicant

Through


Saadullah Khan Marwat
Advocate

Dated: 08-03-2023

AFFIDAVIT

I, Zia-ur-Rehman S/O Fazal Rehman, R/O Kukari Swat. Ex-Constable No. 3039, Police Station Gulwari Swat (Appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief.


DEPONENT

بیت جہاد سروس ٹریڈنگ کمپنی

منجانب ایڈوائس

محمد کبیر

بنام

صہب الرحمن

دعویٰ اپیل

باسمہ تعالیٰ

مستندہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دیکھ کر وائس منقطع آن مقام اپنا اور
کیسٹ اسٹڈنٹ صاحب خان سرور سے ایڈوائس ہائی کورٹ کو وکیل مقرر کر کے اٹارن کیا جاتا ہے کہ صاحب
موصوف کو مقدمہ کی نکل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے دینی اور دفتر ثالثہ و فیصلہ برتاف
یعنی جواب دہی اور قابل دعویٰ اور لیکچرنگ ڈگری کرنے اور دعویٰ چیک در پیہ اور مرضی دعویٰ اور درخواست
پر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز لیکچرنگ عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی
اور مستحق نیز وارڈ کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور لیکچرنگ ضرورت مقدمہ منجانب
کے نکل یا جزوی کاروائی کے واسطے اور وکیل یا اٹارن قانونی کو اپنے ہمراہ یا اپنی بجائے تقدیر کا اختیار ہوگا
اور اس پر مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور
قبول ہوگا اور دوران مقدمہ میں جو خرچہ و تر جانہ الزام مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب
موصوف ہوں گے نیز بقایا و فریبہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی منقائم درجہ
پر ہو یا بعد سے باہر ہو تو وکیل صاحب یا ہمد نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

الرقوم 23-03-08

التبید

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