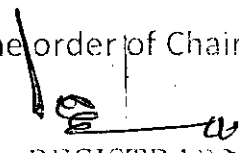


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 254/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.04.2023	<p>The execution petition of Mr. Bakht Amin submitted today by Mr. Umar Sadiq Advocate. It is fixed for implementation report before touring Single Bench at Swat on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

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

Execution Application No. 254 of 2023

In Service Appeal No. 26/2018

Bakht Amin *Applicant*

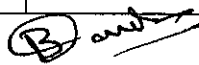
VERSUS


Government of Khyber Pakhtunkhwa & others

.....*Respondents*

INDEX

S. No.	Description	Annexure	Pages No.
1.	Memo of Application with certificate		1-4
2.	Affidavit		5
3.	Copy of Appeal	A	6-10
4.	Copy of judgment dated 06-07-2022	B	11-17
5.	Copy of order dated 22-02-2023	C	18-19
6.	Wakalatnama		20


Applicant Bakht Amin
Through Counsel


Umar Sadiq Advocate High Court
Office: Adnan Law Associates,
Opp. Shuhada Park College Colony,
Saidu Sharif, Swat.
Cell: 0345-9514011

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

Execution Application No. 254 of 2023

In Service Appeal No. 26/2018

Bakht Amin S/o Umar Khan R/o Haroon Abad Odigram
Tehsil Babozai, District Swat (Ex-Constable No.871 Swat
Police).

..... *Applicant*

VERSUS

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer, Malakand Division at Saidu Sharif, Swat.
3. District Police Officer, District Swat.

..... *Respondents*

**APPLICATION UNDER SECTION 7(2)(d) OF
THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNALS ACT 1974, FOR EXECUTION
OF DECISION DATED 06-07-2022.**

Respectfully Sheweth:

1. That the applicant was inducted in Police Department and subsequently posted in Police Force, Swat as Constable on 19-10-2004. Thereafter, the applicant performed his duties to the entire satisfaction of his high ups.
2. That the applicant has performed his duties in extremely harsh security zones, however due to some compelling

circumstances, he did not appear at his place of duty and after some period when he returned for his duty, he was informed about dismissal from service without any prior notice.

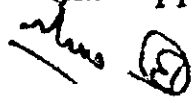
3. That being aggrieved of the dismissal order, applicant filed various written and oral requests but in vain. Against the said discrimination and in violation of Constitution, the applicant filed departmental appeal for his reinstatement which was dismissed being time barred.
4. That feeling aggrieved as above, the applicant approached this Hon'ble Tribunal by filing the captioned appeal (Copy of appeal is annexed as Annexure "A").
5. That this Hon'ble Tribunal after hearing both the parties in detail allowed the appeal in the following terms:

"We have come to the conclusion that in such a situation, we are left with no option but to accept the present appeal, set aside the impugned orders and directed the appellate authority to examine the case of appellant with cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to other constables, then the said authority shall also extend the same treatment to the present appellant".

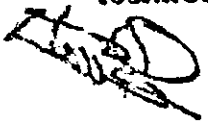
(Copy of judgment dated 06-07-2022 is attached as Annexure "B").

6. That by way of judgment dated 06-07-2022, this Hon'ble Tribunal has directed the Department to examine the case of applicant with the cases of those Constables who were reinstated in service by the Commandant FRP and in case the applicant is found entitled to similar treatment as extended to other Constables, then the authority shall also extend the same treatment to the applicant.
7. That cases of those constables who were reinstated by the Commandant FRP were not examined either. Let alone their distinction from the applicant.
8. That the RPO Malakand issued office order on 22-02-2023, whereby the directions of this Hon'ble Tribunal were ignored and the main issue was reopened while holding that the appellant failed to "defend the charges levelled against him" (Copy of order dated 22-02-2023 is attached as Annexure "C").
9. That this act of respondents is tantamount to undermine the authority of this Hon'ble Tribunal, which may not be overlooked or ignored at all.
10. That respondents deserve to be given exemplary punishment for undermining the judicial authority of this Hon'ble Tribunal. However, as a minimum step the judgment in question may be implemented at its earliest from protecting the applicant from further sufferings.
11. That further grounds with leave of this Hon'ble Tribunal will be raised at the time of oral submissions.

It is therefore humbly prayed that on acceptance of this application the filed judgment dated 00-07-2022 be executed in its letter and spirit with any other remedy deemed just and proper in the circumstances.

Applicant


Bakht Amin
Through Counsel



Umar Saadiq Advocate High Court

CERTIFICATE:

Certified that no such like application has earlier been filed before this Hon'ble Tribunal on the subject matter.

Applicant



Bakht Amin
Through Counsel



Umar Saadiq Advocate High Court

5

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

Execution Application No. _____ of 2023

In Service Appeal No. 26/2018

Bakht Amin *Applicant*

VERSUS

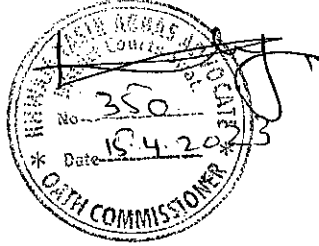
Government of Khyber Pakhtunkhwa & others

..... *Respondents*

AFFIDAVIT

I, **Bakht Amin** (Applicant), do hereby solemnly affirm and declare that the contents of the above titled application are true and correct to the best of my knowledge and belief.

ATTESTED



DEPONENT

B Bakht Amin

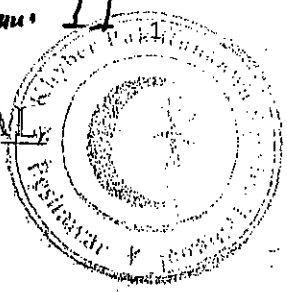
Bakht Amin

15602-0492973-9

6

Amin "A"

BEFORE THE HON'BLE SERVICE TRIBUNAL
KHYBER PAKHTHUKHWA, PESHAWAR



Service Appeal No. 26 of 2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o
Haroon Abad Odigram Tehsil Babozai, District Swat

Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15

Dated: 08-01-2018

VERSUS

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
- 2) The Regional Police Officer/DIG Police, Malakand Region at Saidu Sharif, Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) DSP, Legal Swat Police at Saidu Sharif, Swat.

Respondents

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER OF IMPOSITION OF MAXIMUM
PENALTY WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE.

08/01/18

PRAYER:

On acceptance of this Appeal, the impugned order No. O.B 218 dated 08-12-2010 may be set aside and appellant be reinstated into service as Constable.

C-T-C

REGISTERED
Khyber Pakhtunkhwa
Service Tribunal

7

Respectfully Sheweth:

1. That the appellant was inducted in the Police Department and subsequently posted in police force of District Swat as Constable on 19-10-2004. At the time of dismissal from service, appellant was performing his duty at Police Station Matta, District Swat.
2. That during his service as Constable, appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. Needless to say that a handsome majority of police officials serving in District Swat were hesitant to continue their duties in the said period.
3. That appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high ups. However, due to some compelling circumstances arising out of severe financial burden in the family, appellant could not perform his duty for a certain period.
4. That after the above mentioned absence, when the appellant appeared at his place of duty, he was informed about dismissal from service by respondent No.3 vide order dated 08-12-2010 (Copy of dismissal order is attached as Annexure "A").
5. That appellant being aggrieved with the dismissal order, presented various written and oral requests for his reinstatement before his high-ups, which were never responded to by them.

C.T.C

(10)


and judgment of this Hon'ble Tribunal in Service Appeal No.1214 of 2012, which gave the appellant a fresh cause of action. In this respect the rule laid down in a judgment reported as 2002 PLC (C-2) 268 is applicable, where it was held that no limitation shall run in cases of similarly placed employees.

G) That by virtue of the impugned order, punishment by way of imposition of major penalty has been inflicted upon the appellant retrospectively, i.e. from the date of appellant's alleged absence and not from the date of decision. The impugned order being void ab initio is liable to be set aside on this score as well. Furthermore, as per the consistent view of superior courts and this Hon'ble Tribunal in numerous judgments, limitation shall not run against a void order. Hence, the present appeal is within time for the said reason.


H) That further grounds with leave of this Hon'ble Tribunal will be raised at the time of oral submissions.

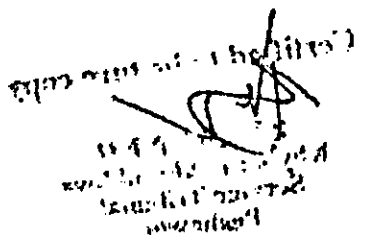
Therefore, it is humbly prayed that on acceptance of this appeal, the impugned order be set aside and the appellant be reinstated in service with all back benefits. Any other remedy though may not specifically prayed for but which courts of justice would demand may also be granted.

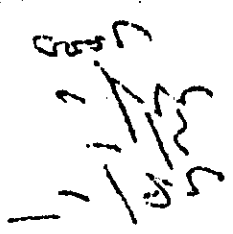
Appellant


Bakht Amin

Through Counsel


Dr. Aqun Khan, Barrister-at-Law


Tribunal
Date: 12/11/12

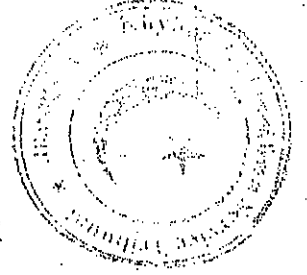


(11) Amin B

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, SWAT**

Service Appeal No.26/2018

Date of Institution ... 08.01.2018
Date of Decision ... 06.07.2022



Bakht Amin S/O Umar Khan, Ex-Constable No.871 Swat Police R/O
Haroon Abad Odigram Tehsil Babozai, District Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Provincial Police
Officer/IGP at Peshawar and three others.

... (Respondents)

Barrister Adnan Khari, ... For appellant.

Noor Zaman Khattak,
District Attorney ... For respondents.

Rozina Rehman ... Member (J)
Fareeha Paul ... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

**"On acceptance of this appeal, the impugned order No.OB
218 dated 08.12.2010 may be set aside and appellant be
reinstated in service as Constable".**

2. Brief facts of the case are that appellant was inducted in the
Police Department and subsequently, posted in Police Force of District

CFC
↓

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duties in extremely harsh security situation when the militants had occupied several parts of District Swat. The appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high-ups. However, due to some compelling circumstances, appellant could not perform his duties for a certain period. That after the above-mentioned absence, when he appeared at his place of duty, he was informed about dismissal from service. Feeling aggrieved, he filed various written and oral requests which were never responded to by the respondents. That having his grievances not redressed by respondents, appellant lost all hopes about his reinstatement. However, in the year 2015-16, various Constables of Reserved Police with similar status as that of appellant were reinstated in service and last in the series of such orders was made on 18.03.2016. Relying on such like orders, one Adil Said Ex-Constable approached the Service Tribunal and his appeal was accepted. The above-mentioned reinstatement order and judgment of this Tribunal gave a fresh ray of hope to the appellant, hence, he filed a fresh departmental appeal for his reinstatement which was dismissed being time barred. Feeling aggrieved, the present service appeal was filed.

3. We have heard Barrister Adnan Khan, learned counsel for the appellant and Noor Zaman Khan Khattak, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Barrister Adnan Khan, learned counsel for the appellant argued

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blatant violation of law, hence, liable to be set aside; that the requirements of due process, fairness and justice were not complied with as the appellant was neither issued a show cause notice nor charge sheet alongwith statement of allegations. Learned counsel submitted that the appellant was never associated with the inquiry proceedings and he was condemned unheard. It was further submitted that numerous officers and officials of Malakand Region Police had fled away at the time of insurgency but majority of those were reinstated into service after restoration of peace in the area and that appellant was not treated at par with those reinstated individuals. He submitted that last in the series of the reinstatement, application had been made by the appellant at belated stage, however, these were the reinstatement orders in respect of sacked constables of FRP and that judgment of this Tribunal in Service Appeal No.1214 of 2015 gave the appellant a fresh cause of action. Reliance was placed on 2002 PLC (CS) 268, wherein, it was held that no limitation shall run in cases of similarly placed employees. He, therefore, requested that the impugned order being void ab-initio is liable to be set aside and the appellant may kindly be reinstated with all back benefits.

5. Conversely, learned District Attorney submitted that the appellant being member of the disciplined force was under an obligation to perform his duties with zeal, zest and devotion irrespective of harsh and tense environment, hence, stance of the appellant is not tenable in the eyes of law. He submitted that the appellant could not perform his duties for a certain period and that he was proceeded against departmentally on the allegations of absentia therefore he was

C-T-C
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(14)

awarded major punishment of dismissal from service by the competent authority after fulfillment of all codal formalities.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that Constable Bakht Amin absented himself from duty w.e.f 17.08.2008 till the date of impugned order i.e. 08.12.2010 vide DD No.09 dated 17.08.2008 followed by DD No.12 dated 11.10.2010 of Police Line without any permission or leave and vide order dated 08.12.2010 of District Police Officer, Swat major punishment of dismissal from service was awarded from the date of his absence i.e. 17.08.2008. No doubt, departmental appeal was not filed within time and the case of the present appellant was filed. Relying on the orders in respect of one Adil Said Constable No.763 of Swat Police who approached this Tribunal in Service Appeal No.1214/2015 and which appeal was accepted vide order dated 02.01.2017. He submitted different applications but when other constables of the Reserved Police were reinstated into service in the year 2015-16 and the last in the series of such of orders was made on 18.03.2016 which prompted the appellant to pursue his case. He, therefore, filed departmental appeal for his reinstatement on 26.07.2017. Learned counsel has placed on file different orders of Ex-Constables who were dismissed from service in the year 2009 w.e.f 2008 but was reinstated vide order dated 18.03.2016. In this regard, order of Commandant Frontier Reserved Police Khyber Pakhtunkhwa Peshawar in respect of Ex-Constable Khalil Ur Rehman is available on

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Malakand Range was removed from service on 10.10.2008 but was reinstated on 04.03.2016. Another order is in respect of Ex-Constable Arshad Iqbal of FRP Malakand Range who was removed from service on 21.02.2008 but was reinstated on 29.03.2016. An order in respect of Ex-Constable Jamshaid Ali is also available on file who was proceeded against departmentally on allegation of absentia w.e.f 28.09.2008 till his removal from service. Lenient view was taken and he was reinstated in service vide order dated 23.09.2015. Similar orders in respect of Ex-Constables Imran and Muhammad Shahid are also available on file. One Ex-Constable Adil Said No.763 of District Swat preferred service appeal against the impugned order dated 29.12.2008 vide which he was awarded major penalty of dismissal from service and vide order of this Tribunal dated 02.01.2017, his appeal was accepted. Relevant Para from the judgment of this Tribunal in Service Appeal No1214/2015 is hereby reproduced for ready reference:

"The Commandant FRP vide orders referred to above had reinstated ex-constables including Khalilur Rehman, Bashir Khan, Arshad Iqbal, Basir Khan and similar others vide orders referred to above. We are not in a position to ascertain from the record that the case of the appellant is similar to the afore-stated constables who were reinstated in service despite their absence during the period of insurgency and militancy. In such a situation we are left with no option but to accept the present appeal, set aside the impugned orders and directed that the appellate authority shall examine the case of the appellant with the cases

C.T.C
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Commandant FRP and in case the appellant is found entitled to similar treatment as extended to the said constables then the said authority shall also extend the same treatment to the present appellant. The appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room."

7. So far as limitation is concerned, in this respect the Rule laid down in judgment reported as 2002 PLC (CS) 268 is applicable where it was held that no limitation shall run in cases of similarly placed employees and the Apex Court condoned the delay which in some cases was more than 10 years, in the interest of justice and in view of the similarity of point involved in other cases.


8. In view of the above discussion, we have come to the conclusion that in such a situation, we are left with no option but to accept the present appeal, set aside the impugned orders and direct the appellate authority to examine the case of appellant in line with the cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to other constables, then the said authority shall also extend the same treatment to the present appellant. Needless to mention that the appellant shall be afforded opportunity of hearing during the proceeding which shall be conducted and concluded within a period of 60 days from the date of receipt of copy

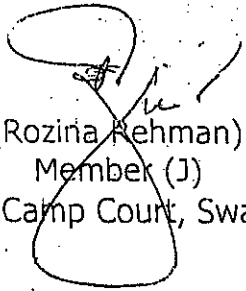


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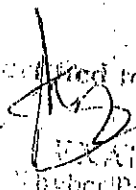
of this judgment. Parties are left to bear their own costs. File be
consigned to the record room.


ANNOUNCED.
06.07.2022

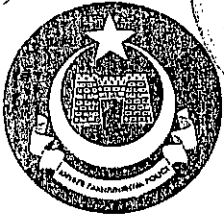

(Fareeha Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

Date of Presentation of Application 07-11-22
Number of Pages 2802
Page No. 30/4
Page No. 33/1
Date of Decision 07-11-22
Date of Decision in Copy 07-11-22
Date of Decision in Original

to be true copy

EXAMINER
Member Pachtunkhwa
Service Tribunal
Peshawar

C-TC




2371
24/02/23

(18)

3844
24/2/23

Amin C

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

**Ph: 0946-9240388 & Fax No. 0946-9240390
Email: ebmulakandregion@gmail.com**

ORDER

This order will dispose of appeal of Ex-Constable Bakht Amin No.871 of Swat District, in compliance with judgement dated 06-07-2022 in Service Appeal No.26/2018 titled "Bakht Amin VS RPO, Malakand and others" wherein the Honorable Tribunal directed to examine the case of appellant with the cases of those constables who were re-instated in service by the Commandant, FRP, Khyber Pakhtunkhwa in case the appellant found entitled to similar treatment as extended to other Constables, then the said authority shall also extend the same treatment to the present appellant. The Honorable Tribunal also directed that the appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 60 days from the date of receipt of copy of this judgement.

Guidance was also sought from AIG/Legal, CPO, Peshawar vide Letter No.6034/legal, dated 24-11-2022, wherein the competent authority accorded approval to approach your office that the departmental appeal of the appellant may be placed before the Regional Police Officer, Malakand Region for decision as the Service Tribunal has remanded the case to the appellate authority then there is no need for re-instatement of appellant. However, as directed by the Tribunal, the appellate authority may provide opportunity to the appellant.

In light of above directions received form Honorable Tribunal vide Judgement dated 06-07-2022 and CPO, Peshawar directions vide Letter No.6034/legal. dated 24-11-2022, the appellant namely Ex-Constable Bakht Amin No.871 was called in Orderly Room on 09-02-2023 and heard him in person by providing opportunity of personal hearing, but he could not produce any cogent reason to defend the charges leveled against him. Therefore, the punishment awarded to him is upheld and his appeal is hereby filed.

Regional Police Officer,
Malakand Region Swat

No. 2340 /E,

Dated 22-02-2023.

Copy to the District Police Officer, Swat for information and necessary action with reference to his office Memo: No.756/Legal, dated 06-01-2023.

EC DSP Legal
Inform Ex-Consts
Concerned
24/02/2023

Place on file
DSP/Legal Swat
27/4/23

CJC

گنوجان عزیز آباد، ایضاً والدین کے ساتھ
بقام سدوش نرسون

19

بخت امین ولد خان، SEX کنٹریکٹ 871
سوات لیس، سائن راون آباد اور کلام تحصیل بالوڑخانہ
سائل / درخواست گزار

کیا :- درخواست گزار نے مسائل دیے ہیں
میں سائل کو چار سالہ خیر خیر خیر خیر
میں سب سے بڑی کورٹ شاپور کورٹ سوات
میں جو حکم و فیصلہ صدر 06-07-2022
ملازمت پر کمال کرانہ RAIN STATE
میں کما حکم و فیصلہ رونا مایہ، یہاں اس کے
کہ منظور کر درخواست گزار سائل کو
میں عدالت سے جو حکم کی روشنی میں
ملازمت پر رونا مایہ کمال
فیصلہ کرانہ کما حکم و فیصلہ رونا مایہ۔

جناب عالی:۔ ذیل عرض ہے۔

میں کہ سائل نے کورٹ سے درخواست کی
سب سے بڑی کورٹ شاپور کورٹ سوات
میں سب سے بڑی کورٹ شاپور کورٹ سوات
میں سب سے بڑی کورٹ شاپور کورٹ سوات
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میں سب سے بڑی کورٹ شاپور کورٹ سوات

11-11-2022

C.T.C

2023 منجانب سائل

حکومت دکنبر

6 اپریل

محنت آمین

اجرا کاروائی : سروس اپیل نمبر 26/2018
باعث تحریر آنکے

مورخہ
مقدمہ
دعوی
جرم

مقدمہ مندرجہ بالا میں اپنے طرف سے واسطے پیروی و جواب دی وکل کاروائی متعلقہ آن
مقام پشاور سوات کمپ کورٹ کے تحت عرصہ صدق اید و کتب حاکمی کورٹ

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب
کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر
اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمدگی اور منسوخ دائر
کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے
واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ

بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ
التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی
اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ
مذکور لہذا وکالت نامہ لکھ دیا کہ سند ہے

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اپریل

ماہ

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الرقوم

گواہ شدہ

کے لئے منظور ہے

Umar Sadiq Adv

مقام پشاور سوات کمپ کورٹ

محنت آمین ولد عر خان

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