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Case No.-______622/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
	2	3		
1	21/03/2023	The appeal of Mr. Ghulam Wajid presented today by Syed Noman Ali Bukhari Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar		
		on Parcha. Peshi is given to appellant and his		
•		counsel.		
		By the order of Chairman		
-		By the order or Charinan		
		REGISTRAR		
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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

522 APPEAL NO. /2023

Ghulam Wajid

V/S

Police Deptt:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE		
1.	Memo of Appeal		01-05		
2.	Copy of tribunal judgment	-A-	06-11		
3.	Copy of reinstatement order	-B-	12		
4.	Copy of impugned order	-C-	13		
5.	Copy of departmental appeal	-D-	14-15		
6.	Copy of rejection order	-E-	16		
7.	Walakat Nama		17		

APPELLANT Ghulam Wajid

THROUGH:

(UZMA SYED) & Å

(SYED NOMAN ALI BUKHARI) ADVOCATES, HIGH COURT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO622-12023

Ghulam Wajid, Constable no.112 r/o Khali Kaley Tehsil Totalai P/o Gharghoshto, District Bunner.

(APPELLANT)

VERSUS

1. The Regional Police officer, Malakand Region, Swat.

2. The District Police officer Buner.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 15/07/2022, WHEREBY THE APPELLANT REINSTATED INTO SERVICE AND MINOR PUNISHMENT OF STOPPAGE OF TWO ANNUAL INCREMENT FOR TWO YEARS WAS IMPOSED UPON THE APPELLANT AND THE INTERVENING PERIOD WE.FROM 5/1//2011 TO 14/07/2022 WAS TREATED AS LEAVE WITHOUT PAY AND AGAINST REJECTION ORDER DATED 22/02/2023.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, IMPUGNED ORDER DATED 15.07.2022 MAY KINDLY BE MODIFIED TO THE EXTENT OF THAT THE PENALTY OF ANNUAL INCREMENT AND OF STOPPAGE WITHOUT PAY" AS "PERIOD TREATED AS LEAVE BACK AND WITH ALL ON DUTY PERIOD SPENT AND **ORDER** DATED **CONSEQUENTIAL BENEFITS** 22/02/2023 MAY KINDLY BE SET-ASIDE. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS ALSO. **APPROPRIATE** THAT, MAY IS FIT AND AWARDED IN FAVOR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

- 1. That the appellant is now working as constable in district police bunner with full zeal and zest.
- 2. That previously the appellant was dismissed from service vide order dated vide order dated 14/11/2011 against which appellant filed departmental appeal which was also rejected vide order dated 01/04/2013.
- 3. That the appellant being aggrieved from the said orders filed service appeal no. 761/2013 against the order dated 14/12/2011 and 01/04/2013, in the Hona'ble Service Tribunal Peshawar, the said appeal was accepted and the direction was given to respondent department to hold denovo inquiry within period of 90 days. Copy of judgment is attached as Annexure-A.
- 4. That the appellant was re-instated in to service vide order dated 27.06.2022 for the purpose of denovo inquiry and denovo inquiry was conducted and the appellant has been re-instated in to service by withholding of two annual increment for two years and the intervening period treated as leave without pay Copy of reinstatement order and impugned order is attached as Annexure-B & C.
- 5. That appellant filed departmental appeal against the order dated 15.07.2022 which was rejected w/o any cogent reason. Hence the instant service appeal on the following grounds. Copy of departmental appeal and rejection order is attached as Annexure-D & E.

GROUNDS:

- A) That the impugned order dated 22/02/2023 and 15/07/2022 is against the law, rules and material on record, therefore liable to be modified to the extent of period treated as leave without pay.
- B) That the sufficient grounds of innocence of the appellant exist as per provision of supreme court judgment cited as NLR 2005 TD supreme Court Page 78" as no one punished for the fault of others. So the impugned order is illegal.
- C) That the rejection order dated 22/02/2023 is not a speaking order which is also violation of the Section 24-A of the General Clauses Act and Supreme Court judgment reported as 1991 SCMR-2330.

That no proper procedure has been followed before the awarding the penalty, the whole proceedings were conducted in violation of law and rules. Thus, not tenable in the eye of the law

That the period appellant remained out of service, it is fault of the department and appellant may not be held responsible for the same, so any irregularities committed by the department not held the appellant responsible according to superior courts judgment.

That if the grievance of the appellant is not resolved then the appellant will face huge financial loss even it will affect the pension of the appellant.

That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.

That the appellant is legally entitled for is pay under section 17 of the Civil Servant Act 1973 of Khyber Pakhtunkhwa Peshawar. Being remained on the strength of the department throughout the period and not a again full employee during that period. Hence the impugned order is liable to be modified.

That the relevant authorities restrain the appellant from performance of duty due there improper exercise of official power, therefore, the appellant cannot be deprived from his legal right of salary.

That the appellant was not remained gainful employee during the period of not adjustment so the appellant is fully entitled to salaries for that period.

K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT Ghulam Wajid

THROUGH:

(UZMA SYED) کی۔' (SYED NOMAN ALT BUKHARI) ADVOCATES, HIGH COURT

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BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO.___/2023

V/S

Ghulam Wajid

Police Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in ther Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.

- 2. The ESTA CODE.
- 3. Any other case law as per need.

(SYED NOMAN ALI BUKHARI) ADVOCATE.HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO.____/2023

Ghulam Wajid

Police Deptt:

<u>AFFIDAVIT</u>

V/S

I, Ghulam Wajid, (Appellant) do hereby affirm that the contents of the service appeal are true and correct, and nothing has been concealed from the honorable Tribunal.

DEPONENT

Ghulam Wajid

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNA

Appeal No #_____6/___/2013

W. J. Provide

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Ghulam Wajid s/o Muhammad Ghulam Ex Constable no 191 R/o Khali kaley Tehsil Totalai p.o Gharghoshto District Buner......

VERSUS

- 1. District Police Officer Buner.
- 2. Regional Police Officer Malakand at Swat.
- 3. Inspector General of Police KPKRespondents Insp Legal Insp Connewits

Appeal under section (4) of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the Order dated 14/12/2011 whereby the Appellant was dismissed from his service and against the Order dated 01/04/2013 whereby the Departmental Appeal of the Appellant was rejected for reinstatement of the Appellant.

Prayer:

That on acceptance of this appeal the impugned orders dated 14/12/2011 and 01/04/2013 may please be set aside and the Appellant may please be reinstated with all back benefits.

Any other remedy, with this august Tribunal deems fit and proper 's ' - that may also be awarded in favor of the appellant

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District Police Offic

Buner

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Respectfully Sheweth:-

That the appellant was appointed as Constable in BPS- 05 in July 2007 on the strength of district police Buner.

Appellant Asi 14,12114,25

EFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 761/2013

Date of Institution Date of Decision

26.04.2013 17.05.2022

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District

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Ghulam Wajid S/O Muhammad Ghulam Ex Constable No.191 R/O Khali Kaley Tehsil Totalai P.O Gharghoshto District Buner.

(Appellant)

VERSUS

District Police Officer, Buner and two others.

(Respondents)

Uzma Syed, Advocate

For appellant.

Kabir Ullah Khattak, Additional Advocate General

For respondents.

Salah-Ud-Din Member (J) Rozina Rehman Member (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the Mutuo

jurisdiction of this Tribunal through above titled appeal with the prayer, as copied below:

"On acceptance of this appeal the impugned orders

dated 14.12.2011 and 01.04.2013 may please be set aside and the appellant may please be reinstated with all back benefits."

Brief facts of the case are that appellant was appointed as 2. Constable on the strength of District Police, Buner in BS-05 in the year 2007. He was dismissed from service on the allegations of

however, he was not informed regarding his reinstalement and consequently, he was re-dismissed on 14.12.2011 without giving any opportunity and without communication of the dismissal order to the appellant He was unaware of his re-dismissal who came to know on 2nd March, 2013, where-after, he filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Uzma Syed Advocate learned counsel for appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Uzma Syed Advocate learned counsel appearing on behalf of appellant, inter-alia, submitted that the both the impugned orders are illegal against law, rules and natural justice, therefore not tenable. It was argued that no proper departmental inquiry was conducted and that the mandatory provision of law was violated. She contended that the absence of the appellant was not willful but due to lack of knowledge about the dismissal order and that neither the reinstatement order nor the re-dismissal order was ever communicated to the appellant. Further contended that he was condemned unheard, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned AAG contended that the appellant was repeatedly informed to join his service but he did not take interest and defaulted in joining service, therefore, no departmental inquiry was needed to dismiss him. He contended that the appellant was well

NDistrict Police Officer Buner

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aware of his reinstatement and dismissal order as well and that after fulfillment of all codal formalities, he was rightly dismissed.

After hearing the learned counsel for the parties and going 6. through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant absented from lawful duty w.e.f 07.04.2011 vide OB No.39 dated 09.04.2011 and DD report No.35 dated 27.05.2011. Consequently, he was proceeded against departmentally and proper inquiry was conducted by the committee consisting of Muhammad jan Khan DSP and Inspector Bakhti Raj Khan Circle officer investigation Daggar. The committee submitted its report with the conclusion that father of the appellant had proceeded to PTC Hangu for upper College Course and that there was no male member to look after his family, therefore, recommended the defaulter constable Ghulam Wajid for reinstatement in service and the period out of service to be counted as leave without pay. The competent authority i.e. DPO Buner did not agree with the recommendations and he awarded major punishment of dismissal from service vide order dated 20.07.2011. However, his appeal was accepted by DIG Malakand Region Said Sharif Swat and the order of his punishment of dismissal from service was set aside. He was awarded minor punishment of stoppage of two increments with cumulative effect vide order dated 05.11.2011. It was on 14.12.2011, when the appellant was once again dismissed from service on account of his absence w.e.f the date of his reinstatement in service i.e. 05.11.2011. Now, the main argument of the learned counsel for the appellant was that this order of reinstatement by DIG.

Atter

District Police Officer Buner

dated 05.11.2011 was never communicated to the appeller nothing was produced which could show that this order communicated in time and secondly, it was argued at length that in proper departmental inquiry was conducted into the matter and major punishment of dismissal from service was awarded. No doubt, that the appellant had been dismissed by the DPO but he was reinstated by RPO on 05.11.2011. The comments and entire record in respect of communication of this order dated 05.11.2011 to the appellant is silent and today record was produced in order to show that this order had been communicated to the appellant; A notice in the name of the present appellant is available on file which was not sent through registered post and no witness was associated in order to show proper service of notice upon appellant. The same notice alongwith the report of the DFC was submitted before DPO and a note was put up by the competent authority in shape of "dismissal from service with immediate effect" bearing the signature and date as 13.12.2011. The proper order of dismissal of the present appellant is available on file bearing OB No.228 dated 14.12.2011. As per this order, the appellant was stated to be absent from 05.11.2011 up to 12.12.2011, therefore, he was dismissed from service being habitual absentee w.e.f the date of his reinstatement in service i.e. 05.11.2011. This is the third round of departmental proceedings and as per law, proper departmental inquiry is a must before imposition of major penalty. In the instant case, neither charge sheet alongwith statement of allegations nor any show cause notice was issued in order to inform the appellant in respect of any sort of departmental proceedings. He TESTED

District Police Office Buyer

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was reinstated in service by DIG on 05.11.2011 and he was redismissed on 14.12.2011 but with effect from 05.11.2011.

7. The preceding discussion vividly transpires that the appellant was not treated in accordance with law. As such, the instant service appeal is partially accepted. Appellant is reinstated into service. Case is remitted to the Department with direction to conduct de-novo inquiry within 90 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED. 17.05.2022

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(Salah-ud-Din) Member (J)

Rozina Rehman) Member (J)

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District Police Officer Buner

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<u>ORDER</u>

In compliance with honorable Khyber Pakhtunkhwa Service Tribunal Peshawar judgment dated 17.05.2022, passed vide Appeal # 761/2013 Ex-Constable Ghulam Wajid No. 191 is hereby re-instated in service for the purpose of De-novo inquiry with immediate effect.

DISTRICT ÓLICE OFFICER. Y' BUNER

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24-Jun-22

OB No. <u>97</u> Dated: <u>27 / 06/ 2022.</u>

Cc: ✓ The DSP Headquarters. ✓ OASI

Attuted 8 Officer N District 10 Baner

Winnen v Folder VORDER REINSTATEMENT GHULAM WAJID & MIAN SALJAD SHAH DEVOVO.docxAasaf Page 2

This order will dispose of the de novo enquiry against Ex-Constable Ghulan Wajid No. 191, initiated vide this office No. 19/Enquiry, dated 29/06/2022

Brief facts

Ex-Constable Ghulam Wahid No. 191 was awarded with major punishment of dismissal from service vide this office OB No. 39 dated 09.04.2011 as an outcome of departmental inquiry conducted against on account of absence from service with effect from 09.04.2011 to 20.07.2011. He made an appeal before the competent authority but it was filed and consequently he challenged the impugn order in the Khyber Pakhtunkhwa Service Tribunal Peshawar. However, he was re-instated into service for the purpose of Denovo inquiry vide OB No. 97 dated 27/6/2022, as per judgment of Service Tribunal Peshawar.

De-novo inquiry was initiated and Mr. Riaz Khan SDPO Daggar was appointed as enquiry officer. The enquiry officer conducted enquiry and the allegation were proved against him with compassionate recommendations that the major punishment be converted into minor punishment as the official concerned has poor family background, being Police Son and there is no severe allegations against him except absence from service. The Enquiry Officer also proposed minor punishment of stoppage of two annual increments and the intervening period as leave without pay.

For going in view, I, <u>Abdur Rashid Khan (PSP) District Police Officer Buner</u> as Competent Authority in exercise of the power vested under Police Disciplinary Rules-1975, agreed with recommendations of EO and converted major punishment into minor punishment of stoppage two annual increments and the intervening period from <u>05.11.2011 to 14.07.2022</u> is treated as leave without pay. <u>Ex-Constable Ghulam Wajid No. 191</u>, is hereby . re-instated into service from 15.07.2022 and allotted Constabulary No. 112. Order announced. M.

Buner

106 OB #

Hice Abdu i Khan (PSP) DISTRICT POLICE OFFICER, BUNER

Cc:

✓ The District Accounts Officer, Buner.

Dated 15 /07/2022 District Ro

Pay Officer / Establishment Clerk / OASI.

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OFFICE OF THE REGIONAL POLICE OFFICER, MATAKANO AT SAIDU SHARIF SWAT. Ph: 0946-9240388 & Fax No. 0946-9249360 Email: ebmalakandregion(ä.gmail.com

ORDE<u>R</u>

This order will dispose off appeal of Constable Ghulam Wayi

of Buner District in connection with minor punishment awarded by the District Police of Y. Buner vide OB No.106, dated 15-07-2022 i.e. stoppage of two annual increments for two year and the intervening period from 05-i1-2011 to 14-07-2022 as leave without pay.

Brief facts of the case are that Constable Ghulam Wajid No.1971 7 Buner District was dismissed from service on account of absence from lawful dua 05-11-2011 by the District Police Officer, Buner vide OB No.228 dated 14-12-2011. He preserve an appeal in this office which was filed being time barred. Later-on he filed service appeal No.761/2013 in Khyber Pakhtunkhwa Service Tribunal and on the orders of the court and a 17-05-2022, he is re-instated into service for the purpose of De-novo enquiry by the Disitle, 211 Officer, Buner vide OB No.97 dated 27-06-2022. After conducting De-novo departmental and the District Police Officer. Buner on the recommendations of the Enquiry Officer. A second major punishment of dismissal from service into "Stoppage of two annual increments" years" with counting the intervening period i.e. 05-11-2011 to 14-07-2022 as leave with a vide OB No.106, dated 15-07-2022.

"He was called in Orderly Room on 09-02-2023 and heard him in pen-The appellant could not produce any cogent reason to defend the charges leveled against therefore, his appeal is hereby filed. Atmiter

Regional Pllice Office.

Malakand Region.

No. 2312 IF. Dated 22-12023.

Endi S. Rall F. Missal

Copy to the District Police Officer, Bunch for information and access action with reference to his office Memo: No.588/PA, dated 23-08-2022, No.786, PAL-Com-25-10-2022, No.753/PA, dated 10-10-2022 and No.1046/PA, dated 30-12-2022. Service b. Fuji Missal containing enquiry file of above-named Constable, received with your mem reference are returned herewith for record in your office.

Buner

District

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Officer

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OFFICE OF THE REGIONAL POLICE OFFICER, MAI AKANO AT SAIDU SHARIF SWATE Ph: 0946-9240388 & Fax No. 0946-9240340 Email: ebmalakandregion@gmail.com

ORDER

This order will dispose off appeal of Constable Ghulam Ways, See 5 of Buner District in connection with minor punishment awarded by the District Police of L. Buner vide OB No.106, dated 15-07-2022 i.e. stoppage of two annual increments for two year and the intervening period from 05-11-2011 to 14-07-2022 as leave without pay.

Brief facts of the case are that Constable Ghulam Wajid No.1994.7 Buner District was dismissed from service on account of absence from lawful duty 05-11-2011 by the District Police Officer, Buner vide OB No.228 dated 1-i-12-2011, fie preserve an appeal in this office which was filed being time barred. Later-on he filed service appear No.761/2013 in Khyber Pakhunkhwa Service Tribunal and on the orders of the court that . 17-05-2022, he is re-instated into service for the purpose of De-novo enquiry by the District in Officer, Buner vide OB No.97 dated 27-06-2022. After conducting De-novo determinental and the District Police Officer. Buper on the recommendations of the Enquiry Officer. In major punishment of dismissal from service into "Stoppage of two aiminal increment" years" with counting the intervening period i.e. 05-11-2011 to 14-07-2022 as leave with ... vide OB No.106, dated 15-07-2022.

He was called in Orderly Room on 09-02-2023 and heard him in peace The appellant could not produce any cogent reason to defend the charges leveled against it therefore, his appeal is hereby filed. Alterter

No. 2312 .IE. . Dated 22-2-12023.

Ende S.Rall F.Missal

reference are returned herewith for record in your office.

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Officer N District Copy to the District Police Officer, Buner for information and access action with reference to his office Memo: No.588/PA, dated 23-08-2022, No.786, P.M. 25-10-2022; No.753/PA, dated 10-10-2022 and No.1046/PA, dated 30-12-2022; Service is Fuji Missal containing enquiry file of above-named Constable, received with your men,

Regional Pulice Offace.

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Malakand Region.

باعث تحريراً نك

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المرقوم

العب

مقد مه مندر جو توان بالا میں اپنی طرف سے واسط بیروی و جواب دبی وکل کاروائی متعلقہ آن مقام مقرر کر کے اقرار کیا جا، تاہے کہ صاحب موصوف کو مقد مہ کی کل کاروائی کا کال اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامہ کر نے ق تقرر ثالث و فیصلہ پر صلف دیئے جواب دبی اورا قبال وعویٰ اور لیسورت ڈگری کر نے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق ندرایں پر دشخط کرانے کا اختیار ہوگا ۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپن کی برا مدگی اور منسوفی نیز دائر کر نے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہوتسم کی تصدیق تقرر کا اختیار ہوگا ۔ اور ضاحیار کار افتار ہوگا ۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپن کی برا مدگی اور منسوفی نیز دائر کر نے اچرا کی واضح اور وکس یا مختار جو کا ۔ از بصورت ضرورت مقد مہ ذکور کے کل یا جزدی کاروائی کے داسط اور وکس یا مختار جو کا ہوگا ۔ اجراء اور صاحب مقرر تقرر کا اختیار ہوگا ۔ اور صاحب مقرر شدہ کو بھی وہ ی جملہ مذکور یا اختیار ات حاصل ہوں گے تقرر کا اختیار ہوگا ۔ اور صاحب مقرر شدہ کو بھی وہ ی جملہ مذکور یا اختیار ات حاصل ہوں گے اور اس کا ساختہ پر داختہ منظور وقبول ہوگا دوران مقد مہ میں جو ٹر چہ ہو جانہ التو ایے مقد میں کہ کا سب سے وہ وگا ۔ کوئی تاری خیش مقام دورہ پر ہو یا حد سے باہر ہوتو وکس صاحب پابند ہوں گے ۔ کہ میروی مذکور کوئی تاری خیش مقام دورہ پر ہو یا حد سے باہر ہوتو وکس صاحب پابند ہوں گے ۔ کہ یہ دوی مذکور کوئی ای بی دوکالت نامہ کو معرفی ای میں دور چر چر جان التو ہے مقد میں گر

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