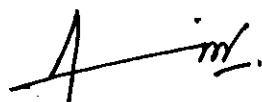


FORM OF ORDER SHEET

Court of _____

Restoration Application No. 369/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.06.2023	<p>The application for restoration of Execution Petition No. 673/2022 submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Single Bench at Peshawar on <u>13-06-23</u>. Original file be requisitioned.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST**

Case Title: Pasham Khan vs EDU Deptt

S.#	Contents	Yes	No
1.	This appeal has been presented by: _____	✓	
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on _____		✓
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____		✓
26.	Whether copies of comments/reply/rejoinder submitted? on _____		✓
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____		✓

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: _____

Signature: _____

Dated: _____

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Restoration NO. _____/2023

Pesham Khan

VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED APPEAL AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned appeal is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the appeal may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 05/6/23

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

**BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Restoration Application NO. 369/2023
CM. NO. /2023

IN

EXECUTION PETITION NO.673/2022

IN

APPEAL No. 414/2019

PASHAM KHAN

VS

EDUCATION DEPARTMENT

INDEX

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	Memo of application with affidavit	-----	1-2
4	Copies of implementation report and order dated 24.01.2022 <i>for order sheet</i>	A & B	3-9.
6	Vakalatnama	8/10

APPLICANT

Through:

↑
**NOOR MOHAMMAD KHATTAK,
ADVOCATE
SUPREME COURT OF PAKISTAN**

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Restoration Application No. 369/2023

**Khyber Pakhtunkhwa
Service Tribunal**

CM. NO. 8 /2023

Diary No. 5923

Dated 9/6/2023

IN

EXECUTION PETITION NO.673/2022

IN

APPEAL No. 414/2019

Mr. Pasham Khan, SET (BPS-17) Assistant District Education Officer, District Tank.

VS

- 1- Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- Secretary, (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- Director of Education (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 4- Director of Education (Merged Area), FATA Secretariat, Warsak Road, Peshawar

APPLICATION UNDER SECTION 151 CPC AND OTHER ENABLING PROVISIONS FOR RESTORATION OF THE ABOVE MENTIONED EXECUTION PETITION NO. 673/2022 FOR THE PURPOSE OF IMPLEMENTATION OF THE JUDGMENT PASSED IN APPEAL NO.414/2019 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the above titled execution petition was pending adjudication before the this Honorable tribunal for the implementation of the judgment passed in appeal No. 414/2019 on date fixed the respondent department produce implementation report whereby the implementation petition has been consigned vide order dated 12.01.2022 but unfortunately the respondents did not implemented the Judgment dated 24.01.2022 in its true letter and spirit and as

(2)

such the petitioner/applicant is not satisfied from the implementation report. Copies of implementation report and order dated 24.01.2022 are attached as annexure**A & B.**

- 2- That it is pertinent to mention here that the judgment passed in appeal mentioned above had not been implemented in letter and spirit but the subject execution had inadvertently been consigned which needs to be restore for the purpose of proper implementation/execution to meets the ends of justice.
- 3- That there is no legal bar in restoring the mentioned execution petition for its proper implementation/ execution as is envisaged in section 7 (2)(d) read with section 151 of the civil procedure code, 1908.

It is therefore, most humbly prayed that on acceptance of this application the above mentioned execution petition may very kindly be restored so that the judgment be implemented in letter and spirit.

Dated: 5/6/23

PETITIONER/APPLICANT

Through:

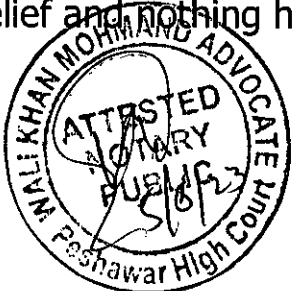
NOOR MUHAMMAD KHATTAK

&

**KAMRAN KHAN
ADVOCATES**

AFFIDAVIT

I Pasham Khan, SET (BPS-17) Assistant District Education Officer, District Tank.do hereby solemnly affirm that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARITE PESHAWAR
(PHONE NO. 091-9223587)

4 AC -3-

Dated Peshawar the January 13th, 2022

NOTIFICATION

No. SO(PE)E&SED/5-19/Re-instatement/2022:

WHEREAS, Mr Pasham Khan was appointed as SET vide order dated 27/11/1985, and awarded move over vide Notification No 11/12/2003 and also promoted to SST Personal-17 vide order dated 21-03/2009. In the year 2003, his name was not included in the seniority list of SST (BPS-16) for which he filed application to the authority concerned and resultantly his name was included in the said seniority.

2. AND WHEREAS, the appellant filed a departmental appeal dated 11/11/2009 for grant of selection grade however it was not honored by the Department against which he filed a Service Appeal No.1065/2012 before the Service Tribunal

3. AND WHEREAS, The Service Tribunal vide Judgment dated 26.08.2001, directed the respondent to decide Departmental appeal of the appellant for grant of selection grade within 60 days. In compliance of the Judgement ibid, the Respondent Department rejected the plea of the appellant for the grant of Selection Grade vide order dated 07.07.2017.

4. AND WHEREAS, feeling aggrieved, the appellant filed writ-petition No 5624-P/2018 before the Honorable Peshawar High Court Peshawar which was dismissed for want of jurisdiction.

5. AND WHEREAS, he filed service appeals No 414/2019, whereby the appellant prayed for grant of Selection Grade from the due date with all consequential benefits.

6. AND WHEREAS, the Service Tribunal vide its judgment dated 24/01/2022, allowed selection grade to the appellant.

7. AND WHEREAS, against the said Judgement the respondent Department filed CPLA before august Supreme Court of Pakistan, which is still pending adjudication.

8. AND WHEREAS, the appellant filed another application to the Director E&SE Khyber Pakhtunkhwa Peshawar dated 26-05/2022, for awarding selection grade in compliance of the judgment dated 24/01/2022 till the outcome of CPLA before august Supreme Court of Pakistan supported by undertaking on Stamp Paper with the declaration and statement that in case of adverse Judgement from the Supreme Court of Pakistan he will abide by the outcomes of court and return of all service benefits drawn by the appellant during intervening period.

9. AND, WHEREAS, the application of the appellant dated 26.05.2022 has been examined at appropriate forum and the case being pending in the august Supreme Court and bereft of merit, the Competent Authority regrets the instant appeal.

10. NOW, THEREFORE, in light of the worthy Khyber Pakhtunkhwa, Service Tribunal judgment dated 13-01-2023, the Speaking order issued by the Elementary & Secondary Education Department Khyber Pakhtunkhwa on 31st October 2022 is withdrawn and for implementation of the worthy Khyber Pakhtunkhwa Service Tribunal judgement dated 24-01-2022, the appeal of the appellant is accepted provisionally/ conditionally subject to the final outcome of CPLA pending before, the august Supreme Court of Pakistan.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Ends: of even No. & Date

Copy forwarded to the:

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Tank.
3. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
4. Mr Pasham Khan was appointed as SET District Tank.
5. Office order file.

(MUHAMMAD ISHAK) 18/1/23
SECTION OFFICER (PRIMARY)

BETTER COPY OF THE PAGE NO. 03
GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
(PHONE NO. 091-9223587)

Dated Peshawar the January 13th, 2022

NOTIFICATION

No. SO(PE)F&SED/5-19/Re-instatement/2022

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2. AND WHEREAS, the appellant filed a departmental appeal dated 11/11/2009 for grant of selection grade however it was not honored by the Department against which he filed a Service Appeal No. 1065/2012 before the Service Tribunal.

3. AND WHEREAS, the Service Tribunal vide judgment dated 26/08/2001, directed the respondent to decide Departmental appeal of the appellant for grant of selection grade within 60 days. In compliance of the Judgment ibid, the Respondent Department rejected the plea of the appellant for the grant of Selection Grade vide order dated 07/07/2017.

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5. AND WHEREAS, he filed service appeals No. 414/2019, whereby the appellant prayed for grant of Selection Grade from the due date with all consequential benefits.

6. AND WHEREAS, the Service Tribunal vide its judgment dated 24/01/2022, allowed selection grade to the appellant.

7. AND WHEREAS, against the said judgment the respondent Department filed CPLA before august Supreme Court of Pakistan, which is still pending adjudication.

8. AND WHEREAS, the appellant field another application to the Director E&SE Khyber Pakhtunkhwa Peshawar dated 26/05/2022, for awarding selection grade in compliance of the judgment dated 24/01/2022 till the outcome of CPLA before august Supreme Court of Pakistan Supported by undertaking on Stamp Paper with the declaration and statement that in case of advance judgment from the Supreme Court of Pakistan he will abide by the outcome of court and return of all service benefits drawn by the appellant during intervening period.

9. AND, WHEREAS, the application of the appellant dated 26/05/2022 has been examined at appropriate forum and the case being pending in the august Supreme Court and bereft of merit, the Competent Authority regrets the instant appeal.

10. NOW, THEREFORE, in light of the worthy Khyber Pakhtunkhwa, Service Tribunal judgment dated 13/01/2023, the Speaking order issued by the Elementary & Secondary Education Department Khyber Pakhtunkhwa on 31st October 2022 is withdrawn and for implementation of the worthy Khyber Pakhtunkhwa Service Tribunal judgment dated 24/01/2022, the appeal of the appellant is accepted provisionally/conditionally subject to the final outcome of CPLA pending before the august Supreme Court of Pakistan.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
E&SE DEPARTMENT

Endst: of even No. & Date

Copy forwarded to the:

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. District Education Officer (M) Tank.
3. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
4. Mr. Pasham Khan was appointed as SET District Tank.
5. Office order file.

(MUHAMMAD ISHAQ)
SECTION OFFICER (PRIMARY)

-4- "B"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 414/2019

Date of Institution ... 02.04.2019

Date of Decision ... 24.01.2022



Mr. Pasham Khan SET (BPS-17) Assistant District Education Officer District Tank
(Merged Area) ... (Appellant)

VERSUS

The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others
... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQ-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant was initially appointed as SET vide order dated 27-11-1985. The appellant was awarded move-over vide order dated 11-12-2003 and personal up-gradation of his post to BPS-17 vide order dated 21-03-2009. In 2003, the appellant came to know that his name is missing in the seniority list, for which he filed application and his name was included in the seniority list. The appellant filed application dated 11-11-2009 for award of selection grade and the appellant was informed to wait for decision of the government vide letter dated 20-01-2010, but with no fruitful result, against which the appellant filed departmental appeal followed by service appeal No. 1065/2012, which was decided vide judgment dated 26-08-2016 with direction to respondents to

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

examine and decide departmental appeal of the appellant for grant of selection grade within 60 days. In compliance, the respondents produced order dated 07-07-2017 communicated to the appellant on 17-07-2018 and his request for grant of selection grade was rejected. Feeling aggrieved, the appellant filed writ petition No 5634-P/2018, which was dismissed on the issue of jurisdiction, hence the instant service appeal with prayers that the impugned appellate order dated 07-07-2017 may be set aside and the appellant may be allowed/granted selection grade in BPS-17 from the due date with all consequential benefits.

02. Learned counsel for the appellant has contended that inaction of the respondents by not allowing selection grade to the appellant from the due date is against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the impugned order is against law, facts and norms of natural justice and material on record and is liable to be set at naught; that the appellant has not been treated in accordance with law, as such, the respondents violated Article-4 and 25 of the Constitution; that the treatment meted out to the appellant is clear violation of the fundamental rights of the appellant as enshrined in the Constitution; that the appellant has been discriminated as other colleagues of the appellant have been allowed selection grade but in case of the appellant, the respondents acted indifferent manner, as such violated the principle of natural justice; that other colleagues of the appellant, who were appointed with the appellant and are placed at serial No. 2,4,7,10,11 and 14 are benefited with the grant of selection grade but the respondents have intentionally and malafiedly deprived the appellant from his valuable right of awarding selection grade; that by not allowing selection grade to the appellant, the appellant suffered huge financial loss; that not allowing the selection grade to the appellant at par with his colleagues, the respondents are violating Article-38(e) of the Constitution.

03. Learned Additional Advocate General for the respondents has contended that vide order dated 11-12-2003, the appellant has been awarded move-over in

ATTESTED

EXAMINER
for Pakhanchaya
Service Tribunal
Peshawar

BPS-17 and up-gradation of his post vide order dated 21-03-2009 in view of the notification dated 01-10-2007 of finance department; that at such belated stage; the appellant is not entitled for selection grade as such practice has been discontinued by the government since 2001; that upon direction of this tribunal, the respondents considered his departmental appeal but was found meritless hence was rejected.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was appointed as SET vide order dated 27-11-1985 and was accorded move-over in BPS-17 vide order dated 11-12-2003 and his post was personally up-graded vide order dated 31-03-2009. The appellant as well as respondents blame each other for missing of his name from the seniority list, for which the appellant tried his level best to include his name in the seniority list, due to which his case of selection grade was left un-granted, hence after a lot of trouble, name of the appellant was included in the seniority list at serial No. 736-A vide order dated 07-10-2008, despite inclusion of his name in the seniority list, selection grade was not granted to him under the plea that though the appellant was entitled for grant of selection grade at that particular time, but at that time, his name was not included in the seniority list, hence he was not granted selection grade at that particular time and now since the government has discontinued such practice of granting selection grade, hence he was refused selection grade. The appellant filed departmental appeal followed by service appeal, which was remanded to the respondents to examine and consider departmental appeal of the appellant within the stipulated timeframe. The respondents rejected his appeal, hence the instant service appeal.

06. We have observed that the respondents constituted a committee to resolve the issue of grant of selection grade and the committee found that though the appellant was eligible for selection grade at that particular time, but since his

ATTESTED

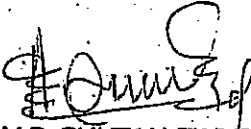
EXAMINER
Panchajanya
vice Tribunal
Bhubaneswar


-7-

name was missing in the seniority list, due to which the appellant was not granted selection grade and now the government has discontinued such practice, hence he cannot be granted selection grade at such belated stage. We are of the opinion that in the first place, no limitation runs against cases involving monitory consideration. Case of the appellant is regarding grant of selection grade, which ultimately would bring some monitory benefits to the appellant, hence his case cannot be rejected on the ground of limitation. Such benefit was already granted to his colleagues and his juniors but the appellant was left out due to missing of his name in the seniority list, which fault cannot be attributed to the appellant.

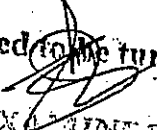
07. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application: 01-04-22
Number of Words: 2000
Copying Fee: 22/-
Urgent: 4/-
Total: 26/-
Name of Copyist: ---
Date of Completion of Copy: 01-04-22
Date of Delivery of Copy: 01-04-22

-8- 4-

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

COC NO. _____/2022

IN

SERVICE APPEAL NO. 414/2019



Mr. Pasham Khan, SET (BPS-17) Assistant District Education Officer, District Tank.

..... **PETITIONER**

VERSUS

- 1- Mr. , Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- Mr. , Secretary, (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3- Mr. , Director of Education (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 4- Mr. , Director of Education (Merged Area), FATA Secretariat, Warsak Road, Peshawar.

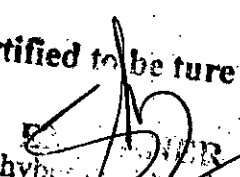
..... **RESPONDENTS**

APPLICATION UNDER ARTICLE-204 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH SECTION 3 & 4 OF THE CONTEMPT OF COURT ORDINANCE, 2004 FOR INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS/CONTEMNORS

RESPECTFULLY SHEWETH:

- 1- That the appellant is peaceful and law abiding citizen of Pakistan and is entitled for all the legal and fundamental rights guaranteed under the constitution of Islamic Republic of Pakistan, 1973.
- 2- That the appellant filed the Service Appeal No.414/2019 before this Hon'ble Court praying that the impugned appellate order dated 07.07.2017 may kindly be set aside and the appellant may be allowed/granted selection grade in BPS-17 from the due date with all consequential benefits. The honorable Service Tribunal decided the service appeal vide judgment/order dated 24.01.2022 in favor of the appellant with the following observation ***"Such benefit was already granted to his colleagues and his juniors but the appellant was left out due to missing of his name in the seniority list, which***

Certified to be true copy


Officer
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

C.O.C No. 673/2022

19.01.2023

Pasham Khan vs Govt



Petitioner in person present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Faheem Khan Assistant for respondents present.

As per notification dated 13.01.2023 grievances of the petitioner have been redressed. His appeal was accepted provisionally/conditionally subject to the final outcome of CPLA pending before august Supreme Court of Pakistan.

In view of the above the present petition stands filed being fully satisfied. Consigned.

Announced.
19.01.2023

Rozina Rehman
(Rozina Rehman)
Member (J)

Certified to be true copy
16/1/23
EXAMINER
Khayber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 07-6-2023
Number of Pages Page 2
Copying Fee 10/-
Urgent 5/-
Total 15/-
Name of Copyist Shahzad
Date of Completion 07-6-2023
Date of Delivery of Copy 07-6-2023

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

CM _____ No _____ /20 23

Pasham Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt

(RESPONDENT)
(DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____ / _____ /202

Casm.

CLIENT

ACCEPTED

NM
**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

Waleed
WALEED ADNAN

Kamran
KAMRAN KHAN

Umar
UMAR FAROOQ MOHMAND

Muhammad
MUHAMMAD AYUB

&

Mahmood
**MAHMOOD JAN
ADVOCATES**

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)