


FORM OF ORDER SHEET

Court of \_\_\_\_\_

12(2) Petition No. 577/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10/08/2023	<p>The Petition U/S 12(2) CPC in appeal no. 410/2022 received today by registered post through Haji Muhammad Shakeel Advocate. It is fixed for hearing before touring Single Bench at D.I.Khan on _____ Original file be requisitioned.</p> <p>By the order of Chairman  REGISTRAR</p>

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CHECK LIST**

Case Title: \_\_\_\_\_

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 pagged?	✓	
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 AG/DAG?	✓	
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 cutting/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: \_\_\_\_\_

*Sah Jahan*

Signature: \_\_\_\_\_

*[Signature]*

Dated: \_\_\_\_\_

2-8-2023

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

12(2) Petition No. 577/2022  
C.M No. \_\_\_\_\_ 2023

In  
Service Appeal No. 410-D/2022

Shah Jahan .....Applicant

**VERSUS**

Govt. of KPK and others .....Respondents

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Dated:

Humble Applicant

Shah Jahan

Through Counsel

Haji Muhammad Shakeel  
Advocate High Court,  
District Courts, D.I.Khan.

0300-9095060

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

12(2) Petition No. 577/2023

G.M No. \_\_\_\_\_

Diary No. 6975

2023

Dated 10/08/23

In

Service Appeal No. 410-D/2022

Shah Jahan son of Malik Sultan resident of Bakhtawar Abad, Tehsil  
& District D.I.Khan.

**APPLICANT**

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Provincial Police Officer / Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, D.I.Khan Division.
3. Deputy Inspector General, Dera Ismail Khan.
4. Superintendent of Police / FRP, D.I.Khan Range.
5. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
6. District Police Officer, D.I.Khan.
7. Superintendent of Police Investigation, D.I.Khan.
8. The Deputy Superintendent of Police, FRP, D.I.Khan Range.

**(Respondents)**

**APPLICATION UNDER SECTION 12(2) OF CPC  
FOR SETTING ASIDE THE JUDGMENT / ORDER  
DATED 27.06.2022 PASSED BY THIS  
HONOURABLE TRIBUNAL IN SERVICE APPEAL  
NO. 410-D/2022 BEING BASED ON  
MISREPRESENTATION ETC.**

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**RESPECTFULLY SHEWETH,**

**Brief Facts of the Case:**

1. That the petitioner challenged the impugned orders bearing OB No. 644/FRP dated 01.07.2014 and order bearing No. 7058-59/EC dated 07.06.2018 (Imposing Major Penalty on applicant from dismissal of service) through Service Appeal No. 410-D/2022 before this Honourable Tribunal. Copy of service appeal is enclosed as **Mark-A**.
2. That, on 6<sup>th</sup> July, 2023, the applicant came to this Honourable Tribunal at Peshawar for updates regarding next date of hearing / proceeding of his above said Service Appeal, then the applicant was informed that his Service Appeal was withdrawn by his learned Counsel on 27<sup>th</sup> June, 2022 by submitting an application. Hence, the appeal of the applicant was dismissed as withdrawn on 27<sup>th</sup> June, 2022. Copies of application and order dated 27.06.2022 are enclosed as **Mark-B & C** respectively.
3. That present applicant feeling aggrieved of the order dated 27.06.2022 of this Honourable Tribunal, wants to challenge the same on the basis of mis-representation etc., inter alia, on the following grounds:

**GROUND:**

- i. That the impugned Judgment / order dated 27.06.2022 of this Honourable Tribunal in Service Appeal No. 410-D/2022 is the outcome of mis-representation etc., thus the same is liable to be set aside invoking provision of section 12(2) CPC.

- ii.* That it is a matter of record that applicant was a civil servant, and earlier he filed the writ petition No. 10-D/2021 before the Honourable Peshawar High Court, D.I.Khan Bench by challenging the impugned orders bearing OB No. 644/FRP dated 01.07.2014 and order bearing No. 7058-59/EC dated 07.06.2018 (Imposing Major Penalty on applicant from dismissal of service). The writ petition was decided on 13.10.2021, wherein, the Honourable High Court held that the matter in issue is of terms and conditions of a civil servant, hence the writ petition was dismissed and it was mentioned in the judgment that “the petitioner is at liberty to approach the proper forum for their redressal, if they are so advised”. (Copy of Judgment dated 13.10.2021 is enclosed as **Mark-D.**). Therefore, the applicant filed the Service Appeal before this Honourable Tribunal, and in such like situation, the Service Tribunal was the right forum for redressal of his grievances, but the Service Appeal was withdrawn on the ground that the petitioner was not a civil servant rather he was appointed under Police Rules. Thus, it was misrepresented before this Honourable Tribunal to the effect that the petitioner was not a civil servant. Hence, on this score alone the impugned order is liable to be set aside.
- iii.* That during proceedings of the lis, the applicant was unable to pursue his case due to blood enmity and the applicant was shifted to District Multan. The Learned counsel had not consulted the applicant while submitting the application for withdrawal of service appeal. Moreover, the Service Tribunal has the jurisdiction to decide the matter in issue in service appeal as the applicant was civil servant and the matter in issue was the terms and conditions of civil servant.

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therefore, on this score alone the impugned order is liable to be reversed.

- v. That the counsel for applicants may be allowed to raise additional grounds at the time of arguments:


For the foregoing reasons, it is respectfully prayed that the Judgment / Order dated 27.06.2022 passed by this Honourable Tribunal in service appeal No. 410-D/2022 may kindly be set aside declaring the same, passed on the basis of misrepresentation etc and may kindly be decided the Service Appeal No. 410-D/2022 on its own merits;

Dated:

Humble Applicant

  
Shah Jahan

Through Counsel

  
Haji Muhammad Shakeel  
Advocate High Court,  
District Courts, D.I.Khan.

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

C.M.No. \_\_\_\_\_ 2023

In

Service Appeal No. 410-D/2022

Shah Jahan

.....Applicant

**VERSUS**

Govt. of KPK and others

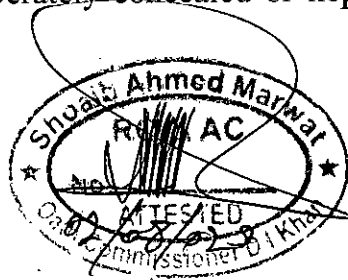
.....Respondents

**AFFIDAVIT**

I, the applicant; do hereby solemnly affirm and declare on oath that all the para-wise contents of the appeal are true and correct to the best of my knowledge and belief; and that nothing has been deliberately concealed or kept secret from this Honourable Court.



*Identified by Counsel*



*Deponent*



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

C.M No. \_\_\_\_\_ 2023

In

Service Appeal No. 410-D/2022

Shah Jahan

.....Applicant

**VERSUS**

Govt. of KPK and others

.....Respondents

**ADDRESSES OF THE PARTIES**

Shah Jahan son of Malik Sultan resident of Bakhtawar Abad, Tehsil & District  
D.I.Khan.

.....Applicant

1. The Government of Khyber Pakhtunkhwa through Provincial Police Officer / Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, D.I.Khan Division.
3. Deputy Inspector General, Dera Ismail Khan.
4. Superintendent of Police / FRP, D.I.Khan Range.
5. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
6. District Police Officer, D.I.Khan.
7. Superintendent of Police Investigation, D.I.Khan.
8. The Deputy Superintendent of Police, FRP, D.I.Khan Range.

.....RESPONDENTS

Dated:

Humble Applicant

Shah Jahan

Through Counsel

Haji Muhammad Shakeel  
Advocate High Court,  
District Courts, D.I.Khan.

ANNEX. A (7)  
Page

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

Service Appeal No. \_\_\_\_\_ of 2022

**Shah Jahan**  
Son of Malik Sultan resident of Bakhtawar Abad, Tehsil &  
District D.I.Khan

[Appellant]

**Versus**

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer / Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, D.I.Khan Division.
3. Deputy Inspector General, Dera Ismail Khan.
4. Superintendent of Police/FRP, D.I.Khan Range.
5. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
6. District Police Officer, Dera Ismail Khan.
7. Superintendent of Police Investigation, D.I.Khan.
8. The Deputy Superintendent of Police, Frontier Reserve Police, D.I.Khan Range.

[Respondents]

SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
ACT, 1974 AIMED AGAINST IMPUGNED ORDERS  
BEARING OB NO. 644/FRP DATED 01.7.2014 AND  
ORDER BEARING NO. 7058-59/EC DATED 07.6.2018,  
WHEREBY THE RESPONDENTS IMPOSED MAJOR  
PENALTY ON APPELLANT FROM DISMISSAL OF  
SERVICE) AS ILLEGAL, WITHOUT LAWFUL  
AUTHORITY, MALA FIDE, UNFAIR AND AGAINST  
THE PRINCIPLE OF EQUITY.

attested to be  
true copy

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**GRANTED IN PART:-**

- a. On acceptance of this Appeal, this Hon'ble Tribunal may kindly be pleased To declare the impugned orders bearing OB No. 644/FRP dated 01.7.2014 and order bearing No. 7058-59/EC dated 07.6.2018 (Imposing Major Penalty on appellant from dismissal of service) as illegal, without lawful authority, mala fide, unfair, unjust and against the principle of natural justice and be set-aside the same.
- b. To declare the decision/order of Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar regarding dismissal of appellant from service in exercise of powers conferred him under NWFP Police Rules, 1975 by taking ex-parte action as illegal, improper and without affording any opportunity of representing appellant's point of view at any stage before dismissal of service, which too, is of violative of the procedure enumerated in the said Rules and Efficiency & Discipline Rules of Khyber Pakhtunkhwa.
- c. To issue directions to the respondents or to the quarter concerned to reinstate the appellant on his respective post (Constable No.7774) and set aside the impugned orders dated 01.7.2014 and 07.6.2018
- d. That the Impugned orders dated 01.7.2014 and 07.6.2018 (Imposing Major Penalty on appellant from dismissal of service) be suspended during the pendency of the instant writ petition, and the respondents be restrained from further taking any action prejudice to the appellant.
- e. To grant any other relief which this Honorable Court deems appropriate in the given circumstances of the case

**Note:-** Addresses given above shall suffice the object of service.

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Respectfully Sheweth,

The appellant prefers the instant appeal on the grounds hereinafter submitted apropos the following facts

1. That the appellant was appointed as Constable in the Frontier Reserve Police Department during the year 2007 and served with due diligence for almost 05 years having unblemished service records to his credit, earning goodwill and praise from his superiors for his hard work and devotion. In recognition of the efficient and tremendous duties of appellant, no adverse inference was ever drawn by the superiors since nothing of the sort was ever conveyed to the appellant during the entire stretch of his service.
2. That the appellant had availed leave for 60 days w.e.f 29.5.2013 and following its sanction by the competent authority proceed on leave, expected to return for duties on 30.7.2013, in the meanwhile, elder brother of appellant got murdered on 23.7.2013 while incident shattered the entire family of the appellant and left the appellant bewildered, disoriented and oblivious of pursuing his routine hence was marked absent on due date of expected return to duties.
3. That Superintendent of Police, FRP, D.I.Khan Range, D.I.Khan had appointed Mr. Muhammad Nadeem Siddique, DSP/FRP, D.I.Khan as Inquiry Officer who after completion of codal formalities, submitted his finding report and recommended to impose major penalty upon appellant on the charge of absent from duty. Copies of the impugned orders thereto dated 01.7.2014 and 07.6.2018 are enclosed as (Annexure A & B).
4. That it is far-fetched to mention here that to the dismay of appellant, he was charged in a false case registered vide FIR No. 712 dated 30.9.2013 of Police Station Cantt, D.I.Khan and was lodged in jail. During confinement of the appellant in prison, he was shown to have been proceeded against departmentally and through order dated 01.7.2014 passed by S.P/FRP, D.I.Khan was awarded punishment of Removal from Service, albeit in sheer derogation of the law, rules and norms of natural justice. Copy of FIR No. 712 dated 30.9.2013 is enclosed as (Annexure

C)

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5. That adversaries of appellant fabricated a case against the appellant vide FIR No. 499/2014 of police station Cantt: D.I.Khan culminating in further detention of the appellant in prison thus leaving no opportunity for him to defend his cause in departmental proceedings. The authority also did not take into consideration the surrounding facts and chose to decide the matter *ex parte* entailing in award of the above major penalty of removal from service. Copy of FIR No. 499 of 2014 is enclosed as (Annexure D)
6. That it was on 13.3.2015, the appellant was acquitted in case FIR No. 712 of 2013 by way of judgment rendered by Additional Sessions Judge-II, D.I.Khan, but yet remained in custody due to pendency of case FIR No. 499/2014. In this case too, the appellant also earned acquittal in consequence of judgment dated 13.11.2017 of Hon'ble Peshawar High Court, D.I.Khan Bench, thereafter the appellant has since been released from custody thus absolving appellant of all encumbrances. The said judgment passed by Peshawar High Court, Peshawar was upheld and maintained by apex Supreme Court of Pakistan vide judgment dated 21.01.2019. Copies of judgment dated 13.3.2015, judgment dated 13.11.2017 and judgment dated 21.01.2019 are enclosed as (Annexure E, F & G).
7. That dissatisfied of the inaction on the part of respondents to award major penalty of dismissal from service on the basis of Inquiry report, the appellant having left with no other efficacious remedy had filed W.P No. 10-D/2021 before Hon'ble Peshawar High Court, D.I.Khan and vide judgment dated 13.11.2021, it was directed to the appellant to resort this Hon'ble Tribunal for redressal of his grievances. In compliance of the said directions, the appellant submitted representation dated 30.10.2021 to the Inspector General of Police/Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar but desire relief could not be granted to the appellant. Copies of W.P No. 10-D/2021, judgment passed by Peshawar High Court, D.I.Khan Bench, Representation/Revision Petition are enclosed as Annexures H, I & J respectively.
8. That disgruntled of the inaction on the part of respondents to award major penalty of dismissal from service on the basis of Inquiry report, the appellant approaches this Honourable Tribunal for redressal of his grievance on inter-alia the following grounds.

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C O U N T Y I N D E X

- a. That the action of the Respondents/Police authorities dismissing the Appellant is against law, void and violative of procedure enumerated in NWFP Police Rules, 1975 and in Efficiency & Deficiency Rules, Khyber Pakhtunkhwa hence not tenable in the eyes of law which is liable to be undone by this venerable Court in its constitutional corrective jurisdiction.
- b. That the impugned orders dated 01.7.2014 and 07.6.2018 whereby the appellant has been dismissed from service, is ultra-vires, whimsical, outcome of malafide, against law, without jurisdiction, abuse of procedure, without lawful authority and having no binding effect upon rights of appellant.
- c. That the criminal cases registered against the appellant were culminated into to acquittal of appellant upto Apex Supreme Court of Pakistan vide judgment dated 21.01.2019 and accordingly the appellant was released in the FIR No. 712 of 2013 and FIR No. 499 of 2014, thus absolving from all encumbrances. Nevertheless to say that the entire departmental proceedings against the appellant were carried out in absentia of appellant when he was confined in jail which amount to grave miscarriage of justice. Now the appellant seeks indulgence of this Hon'ble Court to interfere in the matter as to whether the department/respondents can proceed against the appellant without giving him a right of audience, which too, ordained and envisaged in the Khyber Pakhtunkhwa Police Rules, 1975.
- d. That the appellant has unblemished service career which cannot be culminated upon dismissal from service. No warning or explanation was given to the appellant during his entire service except this inquiry. It is sorry state of affairs that respondent/competent authority while passing the impugned orders has not taken care norms of justice and kept himself away from the lawful authority exercised in this particular matter. This conduct of the respondents leads to an irresistible conclusion that the impugned orders

dated 01.7.2014 and 07.6.2018 are tainted with mala fide and against the norms of justice.

e. That the appellant has not been afforded with a fair chance to defend his rights. Appellant had unaware that what kind of inquiry was conducted and what type of evidence was collected. Moreover, no opportunity of cross-examination was provided to the appellant during the inquiry proceedings. Hence, all the proceedings have been conducted one sided and in a stereotype manner.

f. That appellant was legally entitled to be communicated with the report of inquiry officer. Rather it was the right of appellant to be remained aware with all the proceedings conducted into the matter. In this regard, Rule 6 of Khyber Pakhtunkhwa Police Rules, 1975 regarding procedure of the departmental inquiry is crystal clear which is reproduced infra:-

**Procedure of Departmental Inquiry:-**

i. Where an Inquiry Officer is appointed the authority shall.

a. Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration;

b. Require the accused within 7 days from the day the charge has been communicated to him to put in a written defence and to state at the same time whether he desires to be heard in person;

ii. The Inquiry Officer shall inquire into the charge and may examine such oral or documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the witnesses against him.

iii. The Inquiry Officer shall hear the case from day to day and no adjournment shall be given except for reasons to be recorded in writing and where any adjournment is given,

a. It shall not be more than a week; and

b. The reasons therefore shall be reported forthwith to the authority

iv. Where the Inquiry Officer is satisfied that the accused is hampering, or attempting to hamper the progress of the inquiry he shall administer a warning and if thereafter he is satisfied that the accused is acting in disregard of the warning, he shall record a



finding to that effect and proceed to complete the departmental inquiry ex parte.

v. The Inquiry Officer shall within 10 days of the conclusion of the proceedings or such longer period as may be allowed by the authority, submit his findings and grounds thereof to the authority.

Thus, non-compliance of above-referred procedure as envisaged in the Police Rules, 1975 and non-communication of the reports of the Inquiry Officer to appellant, vitiates all the departmental proceedings against him. In addition to above, all the proceedings against the appellant is illegal, self-contradictory, violative of the procedure and replete irregularities which cannot provide a legal backing to the impugned orders.

g. That it is an undeniable fact on the face of record that allegation contained in the charge sheet culminating into award of the one of major punishment of most harsh kind were based on misconception of true facts, wrong, incorrect and misconceived.

h. It is worthy to mention that the appellant has virtually been condemned unheard and subjected to a major punishment without being provided with an appropriate opportunity to defend his cause beyond any encumbrance thus calling for interference by this Hon'ble Court to undo the injustice.

i. That under the law the Inquiry Officer was required to furnish all the documents and witnesses along with the charge to the accused official. In this regard, Section 10 of the Public Servants (Inquiries) Act, 1850, is reproduced as under:-

**10. Copy of charge and list to be furnished to accused.** A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day



(14)

(S)

of delivery and the first day of the inquiry.

On this score too, the impugned orders are liable to be declared as null & void.

- j. That there is nothing on records to prove any complicity on part of the appellant in involvement in either of the cases registered against him and above all the appellant has earned acquittal in both the cases from Courts of competent jurisdiction. The punishing authority ought to have awaited the outcome of the Court proceedings before finally deciding the departmental action. However, while pushing the inquiry proceedings in a slipshod manner the Inquiry Officer wrongly recommended award of Punishment to the appellant as against the facts and law on the subject. The incorrect, wrong and erroneous recommendation made by the Inquiry Officer ought not been considered by the authority i.e S.P/FRP, D.I.Khan for award of punishment but to have rejected altogether.
- k. That the charge sheet and the inquiry to probe into the charge were having no legal sanctity. The appellant has not only rendered service to the cause of department over a stretch of good many years, a large family to feed but the punishing authority and for that matter the appellate authority deprived the appellant and his family of their due earning while ignoring these aspects blatantly.
- l. That before dismissal of service of appellant, the appellant had a vested right of hearing before any order adverse to his interest was passed by virtue of principle of *audi alteram partem* which was the least requirement. The respondents, in the case of appellant, had imposed major penalty influence mainly relying on the charge of absent and that too one sided, the veracity and authentic of which, is not credible, therefore, the same is illegal, *void ab initio* and against the Rules.
- m. That the competent authority while awarding the major penalty should always keep in mind the gravity of charge, which in the case of appellant had not been proved. Where gravity of charge is of lesser degree and circumstances reflected

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absence of bad faith and willfulness then minor punishment might be a preferred course.

n. That law provides for more than one kind of punishments keeping in view the object of such penal provisions and the gravity of the charge in a case. Conceptually punishment to a delinquent employee is premised on the concept of retribution, deterrence or reformation. In awarding punishments, the Competent Authority has to keep in mind the underlying object of law and the severity of the charge.

o. That where ever wide worded powers conferring discretion exists there remains always the need to structure the discretion, so that the decision will achieve the high quality of justice. The exercise of powers by the respondents without observing law, Statutes is not tenable in the eye of law rather violative of the procedure enumerated in the NWFP Police Rules, 1975 and the respondents have failed to rationalize and regulate their powers by Rules, the courts have to intervene where exercise of such powers appears to be arbitrary and capricious.

p. Counsel for the appellant craves leave to raise additional grounds at the time of hearing.

**For the afore-stated grounds, the instant appeal may please be allowed as prayed for.**

**Any other relief, to which the present Appellants is deemed entitled in facts and circumstances of the case, may please be granted in his favour with costs throughout.**

Dated: 01/13 /2022

Your Humble Appellant

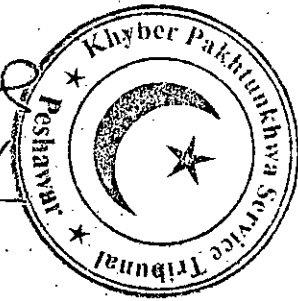
Through Counsel

*Ahmad Ali*  
Advocate Supreme Court

*Miss Shumaila Awan*  
Advocate High Court

ANNEX-B

Before the Honorable Service Tribunal  
Khyber Pakhtunkhwa Peshawar



Service Appeal No 410-D/2022

PAF  
27/6/22

Malik Shah Jahan versus Govt of KP etc

Application for withdrawal of above titled

appeal no 410-D/2022

R/shah Jahan

Applied through counsel submits as under

1- That above titled appeal is pending before this Honorable Tribunal for adjournment, fixed for today i.e. 27/6/2022.

1- That police personnel are appointed under police rules and not under civil servant Act 1973.

Therefore I withdraw the above titled appeal, sought permission to file the case before proper forum.

Date: 27/6/2022

Ahmed Ali Adv ASC

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



ANNEX. e  
Page = 17  
Appeal No. 410/22  
Shah Jehan vs Govt

28.04.2022

Tour to camp court D.I.Khan has been cancelled, therefore, adjourned for the same on 27.06.2022.

*[Signature]*  
Reader

27<sup>th</sup> June, 2022

1. Counsel for the appellant present.
2. Learned counsel for the appellant submitted an application for withdrawal of the appeal on the ground that this Tribunal had no jurisdiction to decide this appeal. He requested for withdrawal of appeal for presenting before the proper forum. Dismissed accordingly. Consign.
3. *Pronounced in open court in D.I.Khan and given under my hand and seal of the Tribunal on this 27<sup>th</sup> day of June, 2022.*

*[Signature]*

(Kalim Arshad Khan)

Chairman

Camp Court D.I.Khan

Certified true copy

*[Signature]*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar 06/7/23

Date of Presentation of Application 06/7/23  
 Number of Words page 2  
 Copying Fee 10/-  
 Agent 5/-  
 Total 15/-  
 Name of Copyist Shah Jehan  
 Date of Completion of Copy 06/7/23  
 Date of Delivery of Copy 06/7/23

ANNEX-D

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JUDGEMENT SHEET  
THE PESHAWAR HIGH COURT, D.I. KHAN BENCH  
(Judicial Department)

W.P No. 10-D/2021

Malik Shah Jahan

Versus

Government of Khyber Pakhtunkhwa through  
Provincial Police Officer/IGP, Peshawar  
and others



For petitioner Mr. Ahmad Ali, Advocate

For respondents Nemo (Motion case)

Date of hearing 13.10.2021

JUDGMENT

Muhammad Naeem Anwar, J.- Through this single judgment we will decide instant petition and "W.P No. 11-D of 2021" titled "Malik Muhammad Kamran vs. Government of KPK through Provincial Police Officer and 4 others" as identical question of law and fact involved in both these petitions. The petitioner Malik Shah Jahan has sought the following relief and prayed that:-

- To declare the impugned orders bearing OB No. 644/FRP dated 01.7.2014 and order bearing No. 7058-59/EC dated 07.6.2018 (Imposing Major Penalty on petitioner from dismissal of service) as illegal, without

ATTESTED

EXAMINER

Peshawar High Court, D.I. Khan

Department

09/02/2022

lawful authority, mala fide, unfair, unjust and against the principle of natural justice and be set-aside the same.

b. To declare the decision/order of Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar regarding dismissal of petitioner from service in exercise of powers conferred him under NWFP Police Rules, 1975 by taking ex-parte action as illegal, improper and without affording any opportunity of representing petitioner's point of view at any stage before dismissal of service, which too, is of violative of the procedure enumerated in the said Rules and Efficiency & Discipline Rules of Khyber Pakhtunkhwa.

c. To issue directions to the respondents or to the quarter concerned to reinstate the petitioner on his respective post (Constable No.7774) and set aside the impugned orders dated 01.7.2014 and 07.6.2018

d. That the Impugned orders dated 01.7.2014 and 07.6.2018 (Imposing Major Penalty on petitioner from dismissal of service) be suspended during the pendency of the

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instant writ petition, and the respondents be restrained from further taking any action prejudice to the petitioner.

e. To grant any other relief which this Honorable Court deems appropriate in the given circumstances of the case.

2. Facts lying in the background of the instant petition are that the petitioner was appointed as Constable in the Frontier Reserve Police Department in the year 2007, served the Department for almost 05 years. On 29.05.2007 he proceeded on earned leave for sixty days (60) but did not join his duty. On 04.10.2013, the Superintendent Police Investigation communicated SP FRP D.I. Khan that the petitioner has been booked in case FIR No. 712 dated 30.09.2013 under section 324/353/186/148/149 PPC and 13-AO in police station Cantt. District D.I. Khan, thus, he was suspended and proceeded against departmental inquiry which culminated into his removal from service from the date of his absence, on 01.07.2014. In parallel criminal proceedings he was charge sheeted after commencement of criminal trial, remained in custody and after full dressed trial he was acquitted of the charges levelled against him vide Judgment of the learned Additional Sessions Judge-II,

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D.I. Khan on 13.03.2015. Record further transpires that in case FIR No. 499 dated 28.06.2014 under section 302 PPC at police station Cantt: D.I. Khan he was also nominated as an accused, wherein after completion of trial he was convicted under section 302(b) PPC and sentenced to death with the payment of compensation under section 544-A Cr. P.C to be paid of the legal heirs of deceased, vide Judgment of learned Additional Sessions Judge-I D.I. Khan on 31.01.2017, against which he filed criminal appeal No. 11-D of 2017 before this court which was allowed on 13.11.2017 and he was acquitted of the charges. The judgment of this court was assailed before Hon'ble Supreme Court through criminal appeal No. 277 however, on 21.01.2019 the appeal was dismissed. Through instant writ petition filed on 06.01.2021, the petitioner has challenged the orders dated 01.07.2014, & 07.06.2018 of his removal from service. Facts of the connected W.P No. 11-D are that Malik Muhammad Kamran, the petitioner was police constable posted at Police Station Lines District Bannu remained absent from duty since 19.01.2012, for which a departmental inquiry was initiated against him, charge sheet was served upon him, his reply to the charge sheet and show cause notice was received and placed on record. It was

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averred that he along with others was booked in case FIR No. 309 dated 17.06.2012 at Police Station Saddar D.I, Khan under section 302/34 PPC, after submission of challan and recording of evidence all of them were convicted under section 302(b) PPC vide Judgment dated 13.10.2015 however, their Cr. A No. 73-D of 2015 was allowed and they were acquitted of the charges on 04.04.2018. In departmental proceedings after completion, he was dismissed from service vide impugned order dated 07.08.2012. his prayer in the petition is as under:-

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- a. To declare the impugned order bearing OB No. 1444 dated 13.8.2012 and order dated 07.8.2012 passed by respondents/authorities (Imposing Major Penalty on petitioner from dismissal of service) as illegal, without lawful authority, mala fide, unfair, unjust and against the principle of natural justice and be set-aside the same.
  - b. To declare the decision/order of District Police Officer, D.I. Khan regarding dismissal of petitioner from service in exercise of powers conferred him under Khyber Pakhtunkhwa Police Rules, 1975 by taking ex-parte action as illegal, improper and without affording any opportunity of

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representing petitioner's point of view at any stage before dismissal of service, which too, is of violative of the procedure enumerated in the said Rules and Efficiency & Discipline Rules of Khyber Pakhtunkhwa.

- c. To issue directions to the respondents or to the quarter concerned to reinstate the petitioner on his respective post (Constable No. 1906) and set aside the impugned orders bearing OB No. 1444 dated 13.8.2012 and order dated 07.8.2012.
- d. That the Impugned Orders bearing OB No. 1444 dated 13.8.2012 and order dated 07.8.2012 passed by respondents/authorities (Imposing Major Penalty on petitioner from dismissal of service) be suspended during the pendency of the instant writ petition, and the respondents be restrained from further taking any action prejudice to the petitioner.

3. Learned counsel for petitioners contended that when the petitioners have earned acquittal from the court of competent jurisdiction which has been made basis for initiating departmental proceedings against them and that

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too were conducted in absentia, violative to the principle of *audi alteram partem* thus, the impugned orders are against the law, whimsical, arbitrary, fanciful and coram non-judice. He added that petitioners had served the department for long time but without providing them an opportunity as provided in law they were victimized by the impugned orders which on one hand against rule 6 of Khyber Pakhtunkhwa Police Rules 1975 but also against the canons of natural justice. It was also submitted that neither any inquiry was conducted nor the provisions of section 10 of Public Servant (inquiries) Act, 1850 were complied with.

4. Arguments heard and record perused.

5. It is undisputed that on 29.05.2013 the petitioner of instant petition was allowed earned leave for 60 days and it also not denied that he did not report back for duty on completion of 60 days leave i.e., on 30.07.2013. Record reflects that there were two crime reports against the petitioner i.e., FIR No. 712 dated 30.09.2013 under section 324/353/186/148/149 PPC and 13 AO & FIR No. 499 dated 28.06.2014 under section 302 PPC at police station Cantt: D.I. Khan. In the former he was acquitted vide Judgment of the learned Additional Sessions Judge-II, D.I. Khan on 13.03.2015 whereas in the later he was convicted under

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section 302(b) PPC and sentenced to death with the payment of compensation under section 544-A Cr. P.C to be paid of the legal heirs of deceased, vide Judgment of learned Additional Sessions Judge-I D.I. Khan on 31.01.2017. It is an admitted fact that the petitioner was acquitted of the charges when his criminal appeal No. 11-D of 2017 was allowed by this court on 13.11.2017. As per record he was required to report back for duty on 30.07.2013 which remained inexplicable, perplexed and disconcerted that till his nomination in the first ever criminal case which was lodged on 30.09.2013 why did he not report to his office for duty. Accordingly, it appears from record that the petitioner of the W.P. No. 11-D was nominated in the FIR No. 309 dated 17.06.2012 whereas he remained absent from duty since 19.01.2012 thus, for the reasons best known to him he absented himself from duty since 19.01.2012 and has never explained his absence through plausible justification.

6. Moreover, order dated 01.10.2014 reveals that the petitioner of the instant petition was suspended on 04.10.2013, charge sheet and statement of allegations were sent to him through Superintendent Central Prison D.I. Khan which returned with the report that the under-trial

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prisoner has refused to receive the charge sheet, the report was received with office memo No. 11170/WO/H-B dated 11.10.2013. thereafter the charge sheet was delivered upon the petitioner through SHO of concerned police station vide office letter No. 1602/FRP on 25.11.2013 but with no response. Final show cause notice was served upon the petitioner on 04.04.2014 but the petitioner failed to reply within the period of 15 days.

7. Apart from above, petitioner of the instant was acquitted by this Court when his appeal No.11-D/2017 was allowed on 13.11.2017 and was released but this petition was filed on 06.01.2021 despite that criminal appeal No. 277 of 2018 was also dismissed from the apex court on 21.01.2019. The instant petition has been filed before this Court on 06.01.2021 while challenging the validity of the order dated 01.07.2014 & 07.06.2018, especially when he had been acquitted on 13.11.2017, after lapse of more than 6 years from first order and more than two years and six months from last order and no satisfactory explanation has been offered by the petitioner for such delay. Similarly, the petitioner of W.P No. 11-D was acquitted on 04.04.2018 but he approached to this court on 06.01.2021. Thus, both these petitions are hit by the principle of "delay or laches",

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which is based on the maxim "Vigilantibus non dormientibus aequitas subvenit," which means equity aids the vigilant and not the ones, who sleep over his rights. It refers to the unreasonable delay enforcing a legal claim. "Sleeping over his rights" is, therefore, such a right which is no longer available as it is barred by the laches. Hon'ble the apex Court in a case titled "Member (S & R) Chief Settlement Commissioner Board of Revenue versus Syed Ashfaq Ali" (PLD 2003 SC 132) has held that "writ jurisdiction is undoubtedly discretionary and extra-ordinary in nature which may not be invoked by a party who demonstrates a style of slackness and laxity on his part. Furthermore, if a party does not choose legal remedy available under the Statute strictly speaking Constitutional jurisdiction of the High Court cannot be exercised in his favour. Law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief."

8. Next, the argument of the learned counsel for the petitioners that the petitioners have been acquitted from criminal cases and departmental inquiries were not conducted is not tenable in the eye of law when they were served with the charge sheets i.e., if first case through SHO of PS cantt: D.I. Khan and in former case by inquiry officer

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but neither they filed written reply to the statement of allegations nor the reply of last show cause was filed by them. The petitioners cannot say that no regular inquiry was conducted into the matter when statement of allegations and show cause notices were served upon them and even then, there is no categorical denial in the contents of these petitions except generalized contents. The petitioners did not raise any objection during inquiry proceedings. The petitioner of instant petition was suspended from service on 04-10-2013 and was removed from the service on 01-07-2014 after completion of inquiry and even after his acquittal in the year 2017 he raised no objection. Acquittal order of the petitioners from criminal cases do not, *per-se*, absolve the departmental liability of civil servants as both departmental and criminal proceedings are entirely different and not inter-linked; one is related to criminal liability and the other is related to discipline of service. This controversy was resolved by the apex Court of Pakistan in case titled "Khalid Dad v. Inspector General of Police and 2 others" (2004 SCMR 192" wherein it was held that: -

Disciplinary proceedings and criminal proceedings---  
Difference---Acquittal from criminal case---Effect---  
Both such proceedings are not interred dependent and  
can be initiated simultaneously and brought to logical  
end separately with different conclusions---Criminal  
proceedings do not constitute a bar for initiation of

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disciplinary proceedings relevant to Efficiency and Disciplinary Rules---Acquittal in criminal case would have no bearing on disciplinary action."

Reliance may also be placed on "Government of N.W.F.-P through Secretary Finance, Excise and Taxation Department Peshawar and 2 others" (2003 SCMR 318".

Another objection of the petitioners was that they were not dealt with in consonance with the section 10 of The Public Servants (Inquiries) Act, 1850 (ACT NO. XXXVII OF 1850), suffice is to say that this Act has already been repealed by the Repealing Act, 1870 (Act No. XIV of 1870). Therefore, this contention is misconceived. Likewise, the provisions of section 10 of The Khyber Pakhtunkhwa Police Rules, 1975 deals with the Procedure of Departmental Inquiry however this rule is not applicable in certain matters as provided in section 8 of the ibid Act which reads as under:

- 8. Rules 5 and 6 not to apply in certain cases. -  
 Nothing in rules 5 and 6 shall apply in a case-  
 (a) where the accused is dismissed or removed from service or reduced in rank, on the ground of conduct which has led to a sentence of imprisonment; or  
 (b) where the authority competent to dismiss or remove a person from service, or to reduce a person in rank, is satisfied that for reasons to be recorded in writing by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause.

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Secretary, Government of N.W.F.P.

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In view of rules 8 this submission of the learned counsel for petitioners is also misconstrued.

9. Admittedly and undeniably, the petitioners were civil servants and the impugned Notifications relate to the terms and conditions of the civil servants, regarding which, this Court cannot exercise its jurisdiction under Article 199 of the Constitution, in accordance with the bar provided in Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, which reads as:

"212. Administrative Courts and Tribunals. (1) Notwithstanding anything hereinabove contained, the appropriate Legislature may by Act [provide for the establishment of] one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of

- (a) matters relating to the terms and conditions of persons [who are or have been] in the service of Pakistan, including disciplinary matters;
- (b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority empowered by law to levy and tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or
- (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.

(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or tribunal

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extends and all proceedings in respect of any such matter which may be pending before such other court immediately before the establishment of the Administrative Court or Tribunal other than an appeal pending before the Supreme Court, shall abate on such establishment:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Majlis-e-Shoora (Parliament) by law extends the provisions to such a Court or Tribunal.

(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal"

10. Likewise, the principle laid down by the apex Court regarding the terms and conditions of civil servants as enunciated in the cases of Miss Rukhsana Ijaz vs. Secretary, Education, Punjab & others (1997 SCMR 167); Ayyaz Anjum vs. Government of Punjab, Housing and Physical Planning Department through Secretary and others (1997 SCMR 169); Rafique Ahmad Chaudhry vs. Ahmad Nawaz Malik & others (1997 SCMR 170); Secretary Education NWFP, Peshawar and 2 others vs. Mustamir Khan & another (2005 SCMR 17) and Peer Muhammad vs. Government of Baluchistan through Chief Secretary & others (2007 SCMR 54), thus, matters relating to the terms and condition of service can be urged before the departmental authority at first

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EVALUATOR

Peshawar High Court Bench

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instance and then before the learned Service Tribunal, so, this Court, while exercising its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, can't step-in.

11. Having discussed the provisions of the Act of 1973, the A.P.T Rules, the status of the petitioners being employees/constables of Police Department do fall within the definition of civil servant which excludes jurisdiction of this Court to adjudicate upon the matters relating to the terms and conditions of a civil servant and the Tribunal established under the provision of the Service Tribunal Act, 1974 is the proper forum for adjudication of such matters.

12. We cannot lose sight of the fact that non-obstante clauses of Articles 212(1) and (2) begin with "notwithstanding anything hereinbefore contained," thus overriding, inter alia, the constitutional jurisdiction of the High Court under Article 199, which is already "subject to the Constitution." Scope of jurisdiction and powers of the Tribunal are provided in sections 4 and 5 of the Act. The High Court, therefore, has no jurisdiction to entertain any proceedings in respect of terms and conditions of service of a civil servant which can be adjudicated upon by the Tribunal under the Act. This Court as a constitutional Court is mindful

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Registrar High Court Bench,

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of the jurisdictional exclusion contained under Article 212 of the Constitution. Any transgression of this constitutional limitation will render the order of the High Court void and illegal. Therefore, unless the jurisdiction of the Tribunal is ousted under section 4(1)(b) of the Act, as described above, assumption of jurisdiction by the High Court in respect of matters of terms and conditions of a civil servant is unconstitutional and impermissible.

13. For the above reasons, both these petitions are dismissed, however, the petitioners are at liberty to approach the proper forum for their redressal, if they are so advised.

Announced  
October 13<sup>th</sup>, 2021  
Hasnain/\*

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(D.B)

Hon'ble. Mr. Justice Abdul Shakoor &  
Hon'ble. Mr. Justice Muhammad Naeem Anwar

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EXAMINOR

Ferozpur High Court Bench.

09/02/2022



RAJ MUHAMMAD SHAKEEL

Advocate  
No: 09-0864  
Date of Issue: January 2018  
Valid upto: January 2021



Acting Secretary  
KP Bar Council

وکالت نامہ

کورٹ  
فیس

صاحب موصل کورٹ جج KPK شہزاد محمد کمال  
 صاحب شہزاد محمد کمال  
 نام گورنمنٹ KPK ویمنز  
 (12/2)  
 ڈکری یا جرم  
 تفصیل ڈکری یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف دانتہ پروڈی اور جواب دہی پرانے پیشی یا تصدیق مقدمہ بنام محمد شہزاد محمد کمال  
 صاحب موصل کورٹ جج KPK شہزاد محمد کمال  
 کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا بذرا ذریعہ دو برو عدالت حاضر ہونا ضروری ہے گا اور ہر وقت نکارے جانے مقدمہ وکیل صاحب  
 کو اطلاع دے کر حاضر عدالت کریں گا اگر پیشی پر منظر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب  
 موصل اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصل صرف مقدمہ پگھری کے علاوہ یا پگھری کے اوقات سے پہلے یا پگھری یا بروز تعطیل  
 پروڈی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صرف پگھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پگھری کے اوقات کے آگے یا پگھری پیش ہونے  
 پر منظر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا سخت نہ واپس کرنے کے بھی صاحب موصل ذمہ دار نہ ہوں گے مجھ  
 کو کل ساختہ پر دانتہ صاحب موصل مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصل کو عرض ڈکری یا جرم، ڈکری یا درخواست اجراء اسمائے ڈکری  
 نظر ثانی قبول گمرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر تاشی یا راضی نامہ و فیصلہ بر عطف کرنے اقبال ڈکری کا بھی اختیار ہو گا اور بصورت مقرر ہونے  
 تاریخ پیشی مقدمہ مزکور پروڈی صدر پروڈی مقدمہ مزکور نظر ثانی قبول و گمرانی و برآمدگی مقدمہ یا انسوی ڈکری یک طرفہ یا درخواست عم انتہائی با ترقی  
 یا گرفتاری قبل از فیصلہ اجراء اسمائے ڈکری بھی صاحب موصل کو بشرط ادائیگی علیحدہ معاہدہ پروڈی کا اختیار ہو گا اور تمام ساختہ پروڈی صاحب موصل مثل کردہ  
 از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصل کو یہ بھی اختیار ہو گا کہ مقدمہ مزکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی  
 قبول گمرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا ہیر سز کو اپنے بجائے یا اپنے امراء مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ایسے  
 اختیارات حاصل ہوں گے جیسے صاحب موصل کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جائد التواء ہونے گا وہ صاحب موصل کا حق ہو گا مگر  
 صاحب موصل کو پوری ٹیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصل کو پورا اختیار ہو گا کہ مقدمہ کی پروڈی نہ کریں اور ایسی صورت  
 میں ہیرا کوئی مطالبہ کسی قسم کا صاحب موصل کے برخلاف نہیں ہو گا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے

ماہ \_\_\_\_\_

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

گاہ حبان (سٹی) (34)  
 Acap...  
 [Signatures]