


Form- A.

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 595/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.08.2023	<p>The implementation petition of Mr. Irfan Khan is submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>28-08-2023</u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

E.P.# 595/2023

Misc Pett: No. _____ /2023

IN

S.A. No. 1861/2022

Irfan Khan

versus

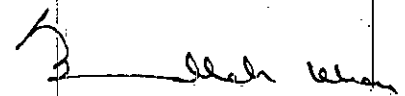
DPO & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 16-12-2022	"A"	4-9
3.	Copy of Judgment dated 12-07-2023	"B"	10-15
4.	Compliance letter dated 16-08-2023	"C"	16

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 24-08-2023

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

E.P.# 595/2023

Misc Pett: No. _____ /2023

IN

S.A. No. 1861/2022

Iran Khan S/O Jehangir Khan,

Sub-Inspector, Police Line,

Charsadda Appellant

VERSUS

1. District Police Officer,
Charsadda.2. Regional Police Officer,
Mardan Region Mardan.3. Provincial Police Officer,
KP, Peshawar Respondents**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT DATED 12-07-2023 OF THE HON'BLE
TRIBUNAL, PESHAWAR:****Respectfully Sheweth:**

1. That on 16-12-2022, applicant filed Service Appeal before this hon'ble Tribunal to restore the rank of Sub-Inspector with all consequential benefits. (Copy as annex "A")
2. That the said appeal came up for hearing on 12-07-2023 and then the hon'ble Tribunal was pleased to hold that:-

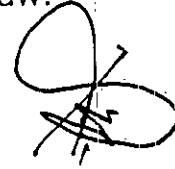
"We convert major punishment awarded to the appellant of reversion to rank of Assistant Sub-Inspector from Sub-Inspector into minor penalty of stoppage of two annual increments with accumulative effect". (Copy as annex "B")

3. That on 16-08-2023, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so far no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 12-07-2022 of the hon'ble Tribunal be complied with hence forthwith.

OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.



Applicant

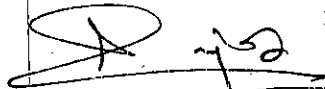
Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal



Amjad Nawaz
Advocates

Dated: 24-08-2023

AFFIDAVIT

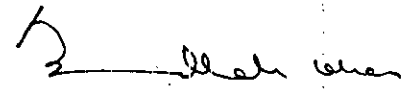
I, Irfan Khan S/O Jehangir Khan, Sub-Inspector Police Line Charsadda (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.



DEPONENT

CERTIFICATE:

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


ADVOCATE

A 4-

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1861 /2022

Irfan Khan S/O Jehangir Khan,
Ex Sub-Inspector / SHO,
Police Station Prang,
District Charsadda, Now
Assistant Sub-Inspector
FRP Hqrs: Peshawar Appellant

VERSUS

1. District Police Officer,
Charsadda.
2. Regional Police Officer,
Mardan, Region Mardan.
3. Provincial Police Officer,
KP, Peshawar Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OB. NO. 265 DATED 04-03-2022 OF R. NO.
01 WHEREBY MAJOR PUNISHMENT OF REVERSION
TO THE RANK OF ASSISTANT SUB-INSPECTOR FROM
THE RANK OF SUB-INSPECTOR WAS IMPOSED UPON
HIM OR OFFICE ORDER NO. 4389-92/ES DATED 23-
06-2022 OF R. NO. 02 WHEREBY DEPARTMENTAL
APPEAL OF APPELLANT WAS REJECTED OR OFFICE
ORDER NO. 2874-80/22 DATED 25-11-2022 OF R.
NO. 03 WHEREBY REVISION / MERCY PETITION OF
APPELLANT WAS REJECTED, YET PERIOD WAS
SPECIFIED FOR TWO YEARS FOR NO LEGAL
REASON.**

⊕<=>⊕<=>⊕<=>⊕<=>⊕

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Respectfully Sheweth:

1. That on 05-01-2022, Mst. Fehmida wife of Wisal R/o Saeed Gul Quarters Charsadda submitted application to appellant, that Wasif S/O Mujahid R/O Gulabad Sardheri without permission entered in to her house started altercation, became annoyed, beat her and open pistol and threatened for killing. He be arrested and legal action against him be taken. The said application was marked to ASI Fazal Nabi for necessary action on the said date. (Copy as annex "A")
2. That on 17-01-2022, Murasla was scribed by ASI Wajid Khan at DHO Hospital Charsadda under section 302/34 PPC for killing the said Mst. Fehmida and Mst. Amina. Bacha Khan S/o Aslam Khan, Kashif S/o Mujahid Khan were charged for the commission of offence by Wisal Khan S/o Behramand Khan. (Copy as annex "B")
3. That the said Murasla was incorporated in to FIR No. 34, dated 17-01-2022, PS Praang, under section 302/34 PPC. Complainant Wisal Khan reported the matter to SHO as under:-

"He was present in village Hamid Gul, got information of the incident that his wife Mst. Fehmida and her sister-in-law, Mst. Amina are lying dead in his home. He, after completion of investigation and satisfaction, charged accused Bacha Khan S/o Aslam Khan and Kashif Khan S/o Mujahid Khan". (Copy as annex "C")
4. That on 21-01-2022, appellant was suspended from service for inefficiency and charge of corruption. (Copy as annex "D")
5. That on 26-01-2022, the legal heirs of Mst. Fehmida deceased patched up the matter with accused was Wasifullah S/o Mujahid Gul, Muhammad Khadim Ullah S/o Mehmood Khan and Izzat Ullah S/o Safdar Ali. It seemed that their names have become on surface in the matter during investigation of police. (Copy as annex "E")

6. That on 26-01-2022, appellant was served with Show Cause Notice by R. No. 01 with allegation that he while posted as SHO PS Praang charged accused Badshah Khan, etc, being irrelevant instead of accused Wasif. In the said FIR and favored accused Wasif for the reason best known to him which act was contrary to the rules and discipline by indulging in gratification and unfair means. (Copy as annex "F")
7. That on 27-01-2022, after patching up the matter with accused party, the said Badshah Khan submitted application before R. No. 01 for initiating legal proceedings against appellant by misusing his power and facilitated real culprits, so he be proceeded legally for the same. (Copy as annex "G")
8. That on 03-02-2022, appellant submitted reply to the Show Cause Notice by denying the allegations relying upon the contents of the Murasla and FIR. (Copy as annex "H")
9. That on 11-02-2022, R. No. 01 served appellant with charged Sheet and Statement of Allegations on the same charges contained in the Show Cause Notice. (Copy as annex "I")
10. That the said charge sheet was replied by appellant in the aforesaid manner as of Show Cause Notice. (Copy as annex "J")
11. That inquiry in to the matter was initiated and after completing the same, the Inquiry Officer submitted enquiry report before the authority on 28-02-2022 and recommended appellant for suitable punishment under KP Police Rules, 1975. ASI Fazal Nabi was also found guilty for not taking prompt action on the written application/complaint of Mst. Fehmida. (Copy as annex "K")
12. That on 03-03-2022, appellant was served with Final Show Cause Notice on the aforesaid allegation which was replied by denying the same as was done in the Show Cause Notice and charge sheet. (Copies as annex "L" & "M")
13. That on 04-03-2022, major punishment of reversion from the rank of Sub-Inspector to the rank of Assistant Sub-Inspector was imposed upon the appellant by R. No. 01. (Copy as annex "N")

14. That on 16-03-2022, appellant submitted comprehensive representation before R. No. 02 for restoration to the original rank of Sub Inspector with all consequential benefits. (Copy as annex "O")
15. That on the representation of appellant, De-Novo enquiry was conducted by SP (Inv) Mardan on the direction of R. No. 02 and then he was recommended for minor punishment vide enquiry report dated 27-05-2022. (Copy as annex "P")
16. That representation of appellant was rejected on 23-06-2022 by R. No. 02 for no legal reason, despite the fact that he was recommended for minor punishment. (Copy as annex "Q")
17. That in the progress report, appellant has shown his efficiency as SHO of the PS since June, 2021 till January, 2022. (Copy as annex "R")
18. That on 05-07-2022, appellant submitted Revision / Mercy Petition before R. No. 03 which was rejected on 25-11-2022. (Copies as annex "S" & "T")

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

GROUND S:

- a. That the matter was reported to the Police Station by complainant Wisal Khan, husband of deceased Mst. Fehmida and appellant was legally bound to register FIR as per his versions and not otherwise.
- b. That no favoritism was made to anyone by appellant in the matter.
- c. That very strange, in the Show Cause Notice and Charge Sheet, R. No. 01 leveled allegations of in-efficiency and corruption against appellant and not of influence of someone. In the statements recorded by Inquiry Officer, Iftikhar Ali, Kashaf, Wasifullah, Khadim Jan, etc. stated in categorical manner. That no gratification was ever made to appellant.

- d. That when none demanded any gratification, then how appellant was termed guilty.
- e. That recommendation of I.O In respect of appellant was in total disregard of the statements of both the parties recorded in the matter.
- f. That no opportunity of cross examination over the witnesses was ever provided to appellant, being mandatory. No major punishment was suggested by the Inquiry Officer for appellant.
- g. That appellant carried out all the proceedings according to law/rules and no negligence, in-efficiency or dishonesty was shown nor was pointed out by the I.O in the inquiry report.
- h. That Murasla was scribed by ASI Wajid Khan in DHQ Hospital Charsadda by complainant Wisal Khan duly verified by Khadim Jan. Appellant only converted Murasla in to FIR as per Law.
- i. That the authorities miserably failed to take the stance of appellant narrated in the Show Cause Notice and Charge Sheet but with closed eyes passed replies the impugned orders which are not only sustainable under the law but are against the rules.
- j. That former / first enquiry dated 28-02-2022 and subsequent enquiry dated 27-05-2022 created doubts in respect of punishments and then benefit of doubt shall go in favor of appellant and not to the department. He shall be exonerated from the base less charges.
- k. That no personal hearing was afforded to appellant so both the orders are not per the mandate of law rather based on malafide and discrimination while the impugned orders of the respondents are not per the mandate of law.

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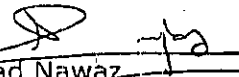
It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 04-03-2022, 23-06-2022 and 25-11-2022 of the respondents be set aside and appellant be restored to the rank of Sub-Inspector with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant

Through


Saadullah Khan Marwat


Arbab Saiful Kamal


Arifjad Nawaz

Advocates

Dated: 12-12-2022

CERTIFICATE:

As per instructions of my client, S. A. No. 1096/2022 has earlier been filed by the appellant before this Hon'ble Tribunal which was withdrawn as Revisional order came into force by modifying the impugned / former orders.


Advocate

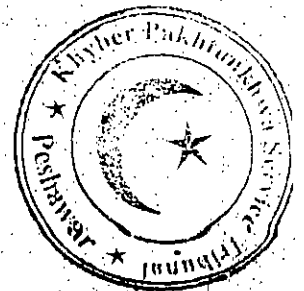
AFFIDAVIT

I, Irfan Khan S/O Jehangir Khan, Ex Sub Inspector / SHO, Police Station Prang, District Charsadda, Now Assistant Sub-Inspector FRP Hqrs: Peshawar (appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief

DEPONENT

"B" 10

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No: 1861/2022

BEFORE: MRS. RASHIDA BANO MEMBER (J)
MISS FAREEHA PAUL MEMBER (E)

Irfan Khan S/O Jehangir Khan, Ex Sub-Inspector / SHO, Police Station Prang, District Charsadda, Now Assistant Sub-Inspector FRP Hqrs. Peshawar. (Appellant)

VERSUS

1. District Police Officer, Charsadda.
2. Regional Police Officer, Mardan Region, Mardan.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Arbab Saif-Ul-kamal
Advocate For appellant

Mr. Asad Ali Khan
Assistant Advocate General For respondents

Date of Institution.....16.12.2022
Date of Hearing.....26.06.2023
Date of Decision.....12.07.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal the impugned orders dated 04.03.2022, 23.06.2022 and 25.11.2022 of the respondents be set aside and appellant be restored to the rank of Sub-Inspector with all consequential benefits.”

(Handwritten mark)

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

H

2. Brief facts of the case, as given in the memorandum of appeal, that appellant while posted at Police Station Prang, Charsadda as SHO, Mst. Fehmida W/O Wisal R/O Saeed Gul Quarters submitted an application on 05.01.2022 to the appellant that Wasif S/O Mujahid without permission entered her house, started altercation with her, took his pistol and threatened to kill her. She requested that he be arrested and proceeded in accordance with law. Appellant marked her application to Fazal Nabi, ASI on the same date i.e 05.01.2023 for necessary action. It was on 17.01.2022 when applicant Mst. Fahmida W/O Wisal Mohammadi alongwith her sister Mst. Ameena D/O Haji Muhammad were murdered in the house of Mst. Fehmida, report of which was lodged by husband of Mst. Fehmida against Bacha Khan S/O Aslam Khan and Kashif S/O Mujahid Gul. Khadim Khan brother of both the deceased verified the contents of the report by signing it. FIR No. 34 U/S 302/34 PPC of P.S Prang Charsadda was registered on the basis of Murasila. The appellant was issued show cause notice on 26.01.2022 by respondent No. 1 with allegation that he while posted at P.S Prang Charsadda, charged accused Badshah Khan instead of accused Wasif, on which the appellant submitted his reply on 03.02.2022 by denying the allegations. The appellant was served with final show cause notice on 03.03.2022. On 04.03.2022, the competent authority imposed major punishment of reversion from the rank of Sub-Inspector to the rank of Assistant Sub-Inspector. Feeling aggrieved he filed departmental appeal on 16.03.2022 before Regional Police Officer, Mardan (respondent No. 2), on which denovo inquiry was ordered by respondent No. 2. After conducting denovo inquiry, inquiry officer submitted his report on 27.05.2022. Departmental appeal to RPO was dismissed and revision petition before respondent No. 3, also met the same fate.

R

ATTESTED



3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued the appellant had not been treated in accordance with law and rules. He further argued that no personal hearing was afforded to the appellant so both the orders are not per the mandate of law rather based on malafide and discrimination. He contended that no opportunity of cross-examination over the witnesses was provided to appellant, being mandatory and no major punishment was suggested by the inquiry officer for appellant, he, therefore, requested for acceptance of the instant service appeal.

5. The learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules. He further contended that he was issued show cause notice with the allegation that he while posted as SHO P.S Prang charged accused Bacha Khan instead of accused Wasif as nominated by complainant in the case FIR No.34. The appellant submitted his reply which was found unsatisfactory, therefore, after fulfillment of all codal formalities he was awarded major penalty of reversion in rank i.e from Sub-Inspector to Assistant Sub-Inspector.

6. Perusal of record reveals that appellant was SHO of Police Station Prang, Charsadda. On 05.01.2022 one Mst. Fehmida W/O Wisal R/O Saeed Gul Quarter submitted an application to the appellant that Wasif S/O Mujahid, her nephew, came to her house, started altercation with her, took his pistol and threatened to kill her. She, therefore, requested the appellant/SHO of PS Prang

ATTESTED

Assistant Advocate General

13

to arrest and proceed against him in accordance with law. This application for taking legal action against the culprits Wasif was marked to Fazal Nabi, ASI on 05.01.2022 by the appellant in the capacity of SHO P.S Prang. It was on 17.01.2022 when applicant Mst. Fahmida D/O Wisal Mohammad alongwith her sister Mst. Ameena D/O Haji Muhammad were murdered in the house of Mst. Fehmida, report of which was lodged by husband of Fehmida against Bacha Khan S/O Aslam Khan and Kashif S/O Mujahid. Khadim Khan brother of both the deceased verified the contents of the report by signing it. FIR No. 34 U/S 302/34 PPC of P.S Prang Charsadda was registered in hospital on the basis of Murasila. One of the nominated accused Bacha Khan filed application to DPO Charsadda on 27.01.2022 against the appellant with allegation that he falsely charged him and Kashif by taking illegal gratification from real culprits. He requested DPO to proceed against the appellant departmentally for his illegal act. As a result, the appellant was suspended on 02.02.2020 by DPO Charsadda. Charge sheet alongwith statement of allegations were issued to him and one Mr. Sajjad Khan, SP investigation was nominated as inquiry officer who after conducting inquiry submitted recommendations to DPO Charsadda. The competent authority in the light of recommendations of inquiry officer awarded major penalty of reversion to the rank of Assistant Sub-Inspector from Sub-Inspector vide order dated 04.03.2022, against which he filed departmental appeal, which was accepted and denovo inquiry was ordered by respondent No. 2. Inquiry Officer after conducting denovo inquiry submitted his recommendation report on 27.05.2022. Departmental appeal to RPO was dismissed and revision petition also met the same fate.

7. Record clearly reflects that appellant was initially charge sheeted on the charges of corruption and charging irrelevant accused Bacha Khan and Kashif

ATTESTED

EXAMINER
SECRETARY

but said charge were not proved on record because report of the complaint FIR No. 34 dated 17.01.2022 was reduced into writing by Wajid Khan, ASI present on duty at casualty of DHQ Charsadda who sent the Murasila to Police Station for registration of FIR through constable Jehanzeb. From the record and statements during inquiry allegation of corruption was not proved. So far as allegation of charging irrelevant person/accused is concerned the same was also not proved because first, report was lodged in hospital and it was not proved that appellant was present in hospital at the time of lodging report by the husband of Mst. Fehmida. If report was directly lodge in P.S, there might have been a chance to influence complaint of FIR No. 34 by appellant using his position to nominate irrelevant person/accused instead of real culprits. Secondly, complainant party also, through media talk, nominated for commission of offence the accused, Bacha Khan, on 17.01.2022 on Aaj News, so charges mentioned in the charge sheet and statement of allegations were not proved.


8. It is also admitted fact on record that Mst. Fehmida in her life submitted an application to the appellant which he marked to Fazal Nabi, ASI for taking legal action on the same day i.e 05.01.2022 but he failed to follow it which is negligence on his part and being incharge of P.S Prang Charsadda, as he was under obligation to look after all the affairs of police station and to protect life and property of people who reside in his territorial jurisdiction and to prevent crimes. So he remained negligent in performing his official duties for which he will have to suffer and face the consequences of his negligence and deserves punishment but not major punishment because same is not commensurate with the negligent act of the appellant. Therefore, major punishment awarded to the appellant is harsh and cannot be sustainable in peculiar circumstances of the case.


ATTESTED

EXAMINER
 District Police Station
 Charsadda

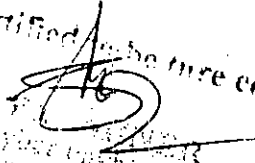
9. For what has been discussed above, we convert major punishment awarded to the appellant of reversion to rank of Assistant Sub-Inspector from Sub-Inspector into minor penalty of stoppage of two annual increments with accumulative effect. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of July, 2023.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 10/8/23
Number of Pages Page 6
Copying Fee 30/-
Stamp 35/-
Date 10/8/23
Signature 10/8/23

Cⁿ 16

To,

1. District Police Officer,
Charsadda.
2. Regional Police Officer,
Mardan Region Mardan.
3. Provincial Police Officer,
KP, Peshawar.


SUBJECT: COMPLIANCE OF JUDGMENT DATED 12.07.2023
PASSED BY HON'BLE SERVICE TRIBUNAL
PESHAWAR IN SERVICE APPEAL NO.1861-P/2022.

Sir,

Please comply with the Judgment dated 12.07.2023 passed by Hon'ble Service Tribunal Peshawar in S.A.NO.1861/2022 in its letter and spirit and obliged.
(Certified Copy attached).

Thanking you

Appellant


Irfan Khan S/O Jehangir Khan,
Sub-Inspector, District Charsadda
Cell No.0336-8685582

Dated: 16.08.2023

بعد الت جٹاپ سروس ٹریڈ پورٹل صورتیہ سندھ پشاور

منجانب ایڈووکیٹ

عرفان خان نام محمد جویس

دعویٰ اپیل Executor

باعتباریہ سندھ ایٹک

© ————— ©

مختصر مذکورہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکیل کاروائی متعلقہ آن مقام پشاور
کیسٹ ایڈووکیٹ ایڈووکیٹ، ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب
مذکورہ کو مقدمہ کی کل کاروائی کا کابل اختیار ہو گا نیز وکیل صاحب کو کرنے راجھی نامہ و اقرار ثالث و فیصلہ برعکف
یہ ہے جواب دہی اور اقبال دعویٰ اور لہذا ڈگری کرنے اجراء اور وصولی چیک و رزپیہ اور عرضی دعویٰ اور درخواست
ہر قسم کی تعلیق اور اس پر دستخط کرنے کا اختیار ہو گا نیز لہذا مقدمہ پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور مستحق نیز دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہو گا اور بصورت ضرورت مقدمہ مذکورہ
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا اقرار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہو گا
اور وہ اپنے مقرر شدہ کر بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پروا خستہ منظور
قبول ہو گا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہو گا اس کے مستحق وکیل صاحب
مذکورہ ہوں گے نیز بقایا و فریبہ کی وصولی کرنے کا بھی اختیار ہو گا اگر کوئی تاریخ پیشی مقام مذکورہ
پر ہو یا عدست باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔
لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

24-8-23

الرقوم

التعبید

التعبید

التعبید

اریاب بیگ انکمال
ایڈووکیٹ

محمد عرفان خان
ایڈووکیٹ

محمد نواز
ایڈووکیٹ

عرفان خان