

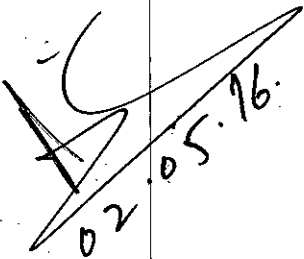
S.No. of proceeding	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.05.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT SWAT.</u></p> <p style="text-align: center;"><u>APPEAL NO.1414/2013</u></p> <p style="text-align: center;"><u>(Shah Hussain-vs-Provincial Police Officer (IGP) Khyber Pakhtunkhwa, Peshawar and three others).</u></p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Appellant with counsel and Mr. Muhammad Zubair, Senior Government Pleader for respondents present.</p> <p>Shah Hussain, Sub-Inspector, hereinafter referred to as the appellant, has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the adverse remarks recorded in his Annual Confidential Report for the period commencing from 26.6.2009 to 9.10.2009 vide which the countersigning authority assessed the appellant as chronic sifarishi, lot of complaints against him and carrying no good reputation and thus down-graded the ACR's to class- C</p> <p>We have heard arguments of the learned counsel for the parties and perused the record.</p> <p>Judgment of the august Supreme Court of Pakistan reported in 1998-PLC(C.S)-1992 regarding expunction of adverse</p>

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02.05.16.

remarks not communicated within a reasonable period and cases reported as 015-PLC (C.S) 868 as well as 2007- SCMR- 1251 regarding criteria of expunction of adverse remarks were also perused and considered.

The appellant was reported as a smart, attentive, alert and efficient officer with good reputation for disposal and public dealing. He was also considered dutiful and responsible officer by Reporting Officer.

The adverse remarks attributed to the appellant are prima-facie not found tenable as mere complaints against an officer would not attribute negatively to the person and character of an official/officer. Moreover reputation of the appellant has been determined good by the immediate officer and negation of the same by the Countersigning Officer is not based on any plausible reason. Moreover the Countersigning Authority has directed the adverse remarks to be conveyed to the officer concerned with further directions that acknowledgement in token of the receipt of the same be duly obtained from him. There is no material on record to observe that the said adverse remarks were ever communicated to the appellant which came in his notice when he was deferred from promotion on 28.06.2016. We were also informed that no adverse remarks were ever earned by the appellant during 31 years service including the period commencing from 1.1.2009 to 25.06.2009 and 10.10.2009 upto 31.12.2009 i.e. period immediately before and after the said adverse remarks. We therefore see no reason to hold that the

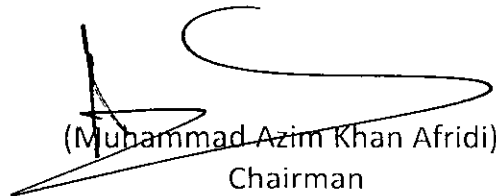
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adverse remarks recorded by the countersigning officer shall sustain.

In view of the above, the appeal of the appellant is accepted and the adverse remarks referred to above recorded by the countersigning authority stood expunged. Parties are however left to bear their own costs. File be consigned to the record room.



(Abdul Latif)
Member



(Muhammad Azim Khan Afridi)
Chairman

02.05.16.

ANNOUNCED
02.05.2016

23.07.2015


Appellant in person and Asstt. AG with Zahid Rahman, Head Constable for the respondents present. Appellant stated that he belongs to District Shangla and the case pertains to territorial limits of Malakand Division. He submitted an application for transfer of the case to Touring Bench Swat. Therefore, case to come up for arguments on 08-09-2015 at camp court, Swat.


MEMBER


MEMBER

8.9.2015

Counsel for the appellant and Mr. Muhammad Zubair, Sr.G.P for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 9.12.2015 at Camp Court Swat.


Chairman
Camp Court Swat


09.12.2015

Appellant in person and Mr. Amir Qadir, GP for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 2.5.2016 at Camp Court Swat.


Chairman
Camp Court Swat

2
30.09.2014

Appellant in person and Mr. Usman Munir, ASI on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply/para-wise comments received on behalf of respondents No. 1 to 3, copy whereof is handed over to the appellant for rejoinder. Written reply on behalf of respondent No. 4 being impleaded by name has not been received, and counsel for the appellant is not available due to strike of the Bar to seek instruction from him in this regard. To come up for rejoinder/further proceedings on 29.01.2015.


Member

08


29.01.2015

Appellant with counsel and Mr. Muhammad Ilyas, Inspector for respondents alongwith learned Addl: AG present. Rejoinder submitted. To come up for final hearing/arguments before D.B on 28.4.2015.


Chairman

28.04.2015

Appellant in person and Mr. Ziaullah, GP for the respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 23.07.2015 before D.B.


Member

Appeal No. 1414/2013
Mr. Shah Hussain

30.12.2013

No one is present on behalf of the appellant. To come up for preliminary hearing on 20.02.2014.

Member

20.02.2014

No one is present on behalf of the appellant. Notices be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 04.04.2014.

Member

04.04.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 09.02.2011, he filed departmental appeal on 04.07.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 14.10.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents for submission of written reply/comments on 17.06.2014.

Appellant Deposited
Security & Process Fee
Rs. 200/- Bank
Receipt is Attached with File.

JW
13-5-14

Member

04.04.2014

This case be put before the Final Bench I for further proceedings.

Chairman

17.6.14

The Hon'ble bench is on Roll.
Present case is adjourned to 30/8/14



Reada

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1414/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/10/2013	<p>The appeal of Mr. Shah Hussain presented today by Mr. Shams-ul Hadi Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	28-10-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>30-12-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;">11-2-14</p>

**BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 1414 /2013

Shah Hussain.....(Appellant)

V E R S U S

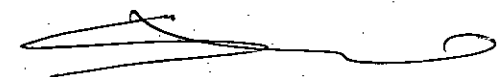
Provincial Police Officer (IGP) Khyber Pakhtunkhwa, Peshawar
and others.....(Respondents)

I N D E X

S.No	Description of Documents	Pages
1.	Memo of Appeal	1-4
2.	Affidavit	5
3.	Addresses of the Parties	6
4.	Copy of appellant's ACR	7-8
5.	Copy of representation	9-10
6.	Copy of letter dated 28/06/2013	14-15
7.	Wakalat Nama	16


Appellant

Through



Shams-ul-Hadi
Advocate High Court,
Peshawar.
Cell No. 0333-9337626

①

**BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 1414 /2013

Shah Hussain Sub Inspector Police, No. 71
Presently posted at Police Station Aloch
District Shangla.....(Appellant)

1492
14-10-2013

V E R S U S

1. Provincial Police Officer (IGP) Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Malakand Rang, at Saidu Sharif, Swat.
3. District Police Officer, Shangla.
4. Mr. Adrees Khan, DIG Investigation Bannu, at CPO Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICE TRIBUNAL ACT
1974 AGAINST IMPUGNED OFFICE ORDER
09/02/2011 VIDE WHICH ADVERSE
REMARKS WERE RECORDED IN THE
APPELLANT'S ANNUAL CONFIDENTIAL
REPORT.**

69 July
14/10/13

PRAYER IN APPEAL:

On acceptance of this appeal the impugned office order 09/02/2011 may please be set aside and adverse remarks recorded in the relevant column of appellant's ACR for the period of 26/09/2009 to 09/10/2009 or onward if any may please be expunge.

Respectfully Sheweth:

Brief Facts giving rise to the instant appeal are as under:

FACTS:

1. That the appellant joined the Police Department in the year 1986 and is performing his duties with zeal and zest.

2. That in contrary to the performance of the appellant Respondent No. 4 predecessor of the Office of Respondent No. 2 with ill intention recorded adverse remarks in the appellant's ACR for the period of 26/09/2009 to 09/10/2009 (it is important to mention here that the immediate boss of the appellant i.e. Respondent No. 3 recorded good/ positive remarks for the said period). (Copy of appellant's ACR is attached).

3. That against the said adverse remarks the appellant preferred departmental representation before the Respondent No. 1. (Copy of representation is attached).

4. That in July 1st 2013 a meeting was held for the purpose of confirmation of SIS/SIS Legal at the office of Respondent No. 2, were the surprisingly the appellant

was informed regarding the previous adverse remarks.

(Copy of letter dated 28/06/2013 is attached).

5. That being aggrieved from the illegal actions and inactions, the appellant prefers this appeal on the following grounds amongst other inter-aila:

GROUND:

- A. That the conduct of respondents is arbitrary, mechanical with a willful purpose to deprive the appellant from further promotion, hence needs interference of this august Tribunal.
- B. That initially the Respondent No. 3 recorded positive remarks in the appellant's ACR but the Respondent No. 4 without noticing the remarks of the Respondent No. 3, with all intention and due to political pressure recorded adverse remarks in the appellant's ACR which is illegal and against the law and rules laid down for the purpose.
- C. That surprisingly after a long period the appellant was informed regarding the said adverse remarks, which is against law and natural justice as well.

(4)

- D. That the appellant has not been treated according to law which act of the respondent is against the fundamental rights guaranteed by the constitution.
- E. That appellant seeks permission of this august Tribunal to relay on additional grounds at the hearing of titled appeal.

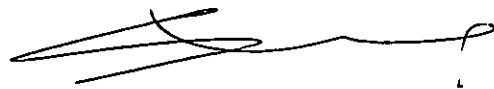
It is, therefore, prayed that on acceptance of this Service Appeal the impugned office order 09/02/2011 may please be set aside and adverse remarks recorded in the relevant column of appellant's ACR for the period of 26/09/2009 to 09/10/2009 or onward if any may please be expunge.

OR

Any other relief which this august Tribunal deems appropriate may kindly be awarded to meet the ends of justice.


Appellant

Through


Shams-ul-Hadi
Advocate High Court,
Peshawar.

5

**BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2013

Shah Hussain.....(Appellant)

V E R S U S

Provincial Police Officer (IGP) Khyber Pakhtunkhwa, Peshawar
and others.....(Respondents)

AFFIDAVIT

I, **Shams-ul-Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE

6

**BEFORE THE SERVICES TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. _____/2013

Shah Hussain.....(Appellant)

V E R S U S

Provincial Police Officer (IGP) Khyber Pakhtunkhwa, Peshawar
and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

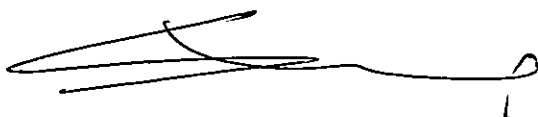
Shah Hussain Sub Inspector Police, No. 71
Presently posted at Police Station Aloch
District Shangla.

RESPONDENTS:

1. Provincial Police Officer (IGP) Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Malakand Rang, at Saidu Sharif, Swat.
3. District Police Officer, Shangla.
4. Mr. Adrees Khan, DIG Investigation Bannu, at CPO Peshawar.


Appellant

Through



Shams-ul-Hadi
Advocate High Court,
Peshawar.

From : The Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.

To : x District Police Officer, Shangla.

Subject: ANNUAL CONFIDENTIAL REPORT (COMMUNICATION OF
ADVERSE REMARKS.

Memorandum:

In the Annual Confidential Report on the working of
ASI Shah Hussain No.20 for the period from 26/06/2009 to 09/10/2009 it has been
mentioned that.

Class of the report: -

"A"

Remarks of the reporting officer: -

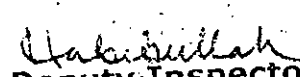
A smart, attentive, alert and
efficient officer with good
reputation for disposal and
public dealing. Knows very well
about his duty and
responsibility.

Remarks of the countersigning officer: -

Chronic sifarish. Lot of
complaints against him does not
Carrey good reputation class of
report downgraded to C.

The above adverse remarks may please be conveyed to the
officer concerned in Order that he may remedy the defects. Representation if made
should be sent not later than one month from the date of receipt of this
communication.

The acknowledgment in token of the receipt of memo: may
please be obtained from him on the attached duplicate copy of this communication
and sent to this Office for record on his CR dossier.


Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.
Sajjad



8 8

DUPLICATE

GSMD SWP 10

No. 13-17

POLICE DEPARTMENT

HEADQUARTERS CID. N.W.I

Annual confidential report on the working of Assistant Sub-Inspectors, Sub-Inspectors & Inspectors for the year ending 31st December, 2009.

Name, Provincial or Rang No. Rank and Grade.	ASI SHAH HUSSAIN NO.20.
Where and on what duties employed during the past 12 months.	From 25.02.09 to 23.04.09 OASI From 24.04.09 to 02.10.09 I/C Traffic Be. From 03.10.09 to 09.10.09 OASI
Class of Superintendent of Police's Report, i.e. 'A' or 'B'	"A".
Is he honest?	No complaint.

Remarks by:--

- (1) Superintendent of Police.
- (2) ~~Deputy Commissioner and~~
- (3) Deputy Inspector-General of Police.

Seen

[Signature]

D/9/M/160/Region, Swat

DANISHWAR KHAN:
Deputy Inspector General of Police
Malakand Region, Saidu Sharif Swat.

adverse Remarks Conveyed,
Vide This Office Memo

25
Date: 9-2-2011

A smart, attentive, alert and efficient officers with good reputation for disposal and public dealing. Knows very well about his duty and responsibility.

[Signature]

(GUL WALI KHAN),
DISTRICT POLICE OFFICER,
SHANGLA.

26/06/09 to 09/10/09.

Chronic Sipandhi. Lots of Do complaints against him. Do not carry good reputation. Complaints downgraded to C.

MUHAMMAD IDREES
PSP-CMM
Deputy Inspector General of Police
Malakand Region, Saidu Sharif Swat.

[Signature]

[Signature]

(9)

9

Before the Provincial Police Officer, Khyber Pakhtunkhwa Peshawar

SUBJECT: APPEAL FOR EXPUNCTION OF ADVERSE REMARKS PASSED BY MR. MUHAMMAD IDREES KHAN THE THEN DIG OF POLICE, MALAKAND REGION COUNTERSIGNING OFFICER OF THE ACR OF APPELLANT VIDE WHICH CLASS OF REPORT WAS DOWN GRADED FROM 'A' TO 'C' FOR THE PERIOD FROM 26.06.2009 TO 09.10.2009.

GROUNDS FOR ADVERSE REMARKS VIDE WHICH ACR OF APPELLANT WAS DOWN GRADED FROM CLASS 'A' TO CLASS 'C'

A chronic safarashi. Lot of complaint against him does not carry good reputation class of report down graded to 'C'

Respected Sir,

Most humbly I beg to submit the following facts before your honour;

1. That the appellant was enlisted as Constable on 30.06.1986
2. That since the date of his enlistment in Police he was performed his duties with devotion and zeal and has left no stone unturned in the discharge of his official duties upto the entire satisfaction of all his senior officers.
3. That in recognition of his good performance he was earned a lot of commendation certificates and cash rewards from his senior officers.
4. That as soon as he was promoted to the rank of Sub Inspector he was posted as SHO in Police Station Mian Jan Shaheed Alpuri which is the District Hqrs: Police Station of District Shangla.
5. That the appellant belongs to Thana Malakand Agency and thus feel no need to make recommendation (Safarash) for transfer to Shangla District.
6. That Swat, Buner and Lower Dir are boundary Districts of Malakand Agency and that appellant should have made recommendation (Safarash) of his transfer to the nearest District.
7. That the appellant can say on oath that throughout his carrier in Police he has never asked any one for his Safarash to his high ups.
8. That the entire service record of the appellant is a witness to the fact that the appellant has never been awarded a single punishment by his seniors.

Ali Khan

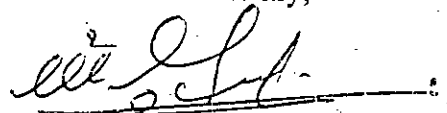
- (14) (13)
9. That what to say of punishment, not a single departmental enquiry has ever been conducted against the appellatant.
 10. That except one ACR Class-B the appellatant was given Class-A ACRs by his seniors.
 11. That appellatant was astonished to see the adverse remarks of the then worthy Regional Police Chief conveyed to him by the Region Office.
 12. That the appellatant carries a good reputation and there is not a single complaint present on the record of Region Office as well as District Police Officer Office.

PRAYER:-

Keeping in view the above mentioned facts it is humbly prayed that the adverse remarks passed by the then Regional Police Chief in the ACR of appellatant may kindly be graciously expunged in the interest of justice and to save the carrier of a dutiful officer.

I shall be thankful for your this act of kindness please.

Your Obediently,



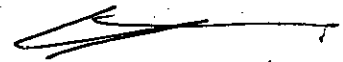
(SHAH HUSSAIN)

Sub Inspector No. 71/M

District Shangla

Dated:

4-7-2013



28/06 2013 10:42

40032 P 004

From : **The Regional Police Officer,
Malakand, at Saidu Sharif, Swat.**

To : **The Commandant PTC Hangu,
The Commandant Elite Force,
Khyber Pakhtunkhwa Peshawar.**

**The All District Police Officers,
All SPs / Incharge Inv: MKD Region
and SP Elite Swat.**

No. 5401-5415 /E, dated Saidu Sharif, the 28/6 /2013.

Subject: **MEETING FOR CONFIRMATION AS SIS / SIS LEGAL.**

Memorandum:

Please direct the following Sub Inspectors / SIS Legal of your respective District /Unites to attend the subject meeting which is schedule to be held on 01-07-2013 in region office Swat for the subject confirmation.

S.No	Name and No	District of Present Posting
1.	Bashir Ahmad No. 223/M	Swat
2.	Naseeb Shah No. 283/M	PTC Hangu
3.	Muhammad Zaman No. 304/M	PTC Hangu
4.	Shahi Bakht No. 374/M	Dir Lower Inv:
5.	Fakhre Alam No. No. 330/M	Dir Upper
6.	Muhammad Yaqoob No. 105/M	Chitral Inv:
7.	Muhammad Wali Shah No. 241/M	On loan from Shangha to Inv: Chitral
8.	Javed Afsar No. 431/M	Swat
9.	Shah Nadir No. 408/M	Chitral
10.	Fahad Khan No. 25/M	Elite
11.	Raza Khan No. 119/M	Elite
12.	Akbar Zeb No. 120/M	Elite
13.	Muhammad Irshad 212/M	Buner Inva:
14.	Akbar Muhammad 220/M	Dir Lower
15.	Faqir Gul 215/M	Elite
16.	Syed Zaman Shah 266/M	Dir Lower
17.	Sher Wali Khan 300/M	Buner
18.	Pir Said 299/M	Elite
19.	Akbar Hayat 294/M	Swat
20.	Rahman Yousef 295/M	Dir Lower

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(12)

21.	Roshan Zada 288/M	Buner
22.	Farooq Jan 291/M	Dir Upper Inv
23.	Shaukat Ali 301/M	Dir Upper Inv
24.	Tika Khan 289/M	Elite
25.	Aftaulah 297/M	Elite
26.	Ahmad Essa 290/M	Elite
27.	Ihsanullah Khan 286/M	Shangla ✓
28.	Sher Hassan 298/M	Shangla ✓
29.	Jehan Zeb Khan 22/M	Elite
30.	Perwaiz Khan 216/M	Buner
31.	Abdul Muzaffar Shah 1/M	Chitral
32.	Muhammad Shah 30/M	Buner
33.	Saeed ur Rehman 31/M	Dir Lower
34.	Muhy-ud-Din 50/M	Chitral
35.	Didar Ghani 61/M	Swat
36.	Muhammad Ghulam 62/M	Buner Inv
37.	Zinab Gul 85/M	Swat
38.	Iqbal Karim 70/M	Chitral
39.	Shah Hussain 71/M	Shangla ✓
40.	Amjad Ali 101/M	Swat
41.	Hasanullah 121/M	Chitral
42.	Ghulam Ali 124/M	Chitral

SI Legal

1.	Sher Mohsin Ul Mulk 449/M	Chitral
2.	Rashid Ahmad 448/M	Dir Upper
3.	Imran Ullah 450/M	Buner

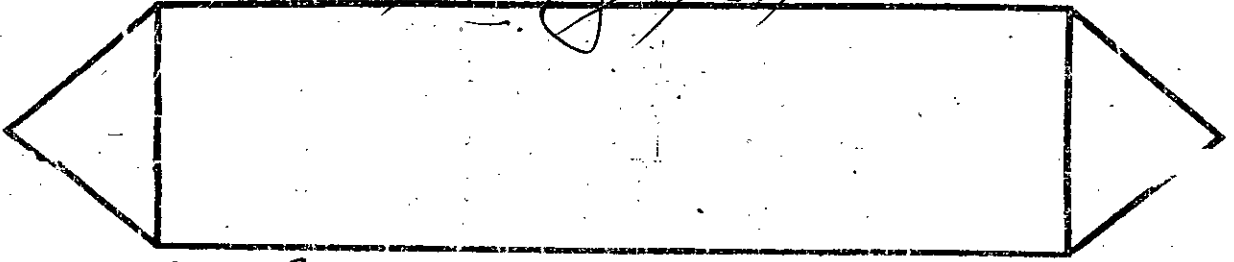
EL,
Seen

Suaker
Regional Police Officer,
Malakand, at Saidu Sharif, Swat.

SP/Inv: Shangla
01/07/2013

Suaker

بعدالت سے روٹی لیسے



20/3/2013

اساتذہ کرام بنام بی بی اے اور بی بی بی

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیرونی و جواب دہی وکل کارروائی متعلقہ
آن مقام لیسے سے کیلئے سسٹمز ایڈیٹرز اور ایڈیٹرز
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیرونی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیرونی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دور پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیرونی
مذکورہ کہ میں لیسے اور کالت نامہ لکھ دیا کہ سند ہے۔

20/3/2013

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المرقوم

گواہ

کے لئے منظور ہے۔

بمقام لیسے

Shams-ul-Uddin