


25.04.2019. None for the petitioner present. Mr. Usman Ghani, District Attorney alongwith Mr. Abdur Raziq, H.C for respondents present. It has been observed that on numerous previous dates, learned counsel for the petitioner sought adjournment on one pretext or the other. Vide order sheet dated 24.12.2018, he was afforded last opportunity to argue the case. Despite that he did not appear on 13.02.2019 and 26.03.2019. It shows his lack of interest in pursuing the case in hand. This Tribunal is constrained to consign the case in hand to the record room.

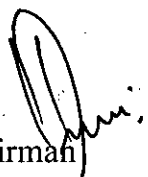
Announced:  
25.04.2019

  
(Ahmad Hassan)  
Member

24.12.2018


Petitioner in person and Addl. AG alongwith Abdur Razaq, H.C for the respondents present.

Petitioner yet again requests for adjournment due to non-availability of learned counsel. Adjourned to 13.2.2019 which shall be the last chance to argue the matter.

  
Chairman

13.02.2019

Petitioner in person and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Aziz Shah Reader present. Petitioner seeks adjournment as his counsel is not in attendance. Adjourn. To come up for further proceedings on 26.03.2019 before S.B.

  
Member

26.03.2019

Petitioner absent. Learned counsel for the petitioner absent. Adjourn. To come up for further proceedings on 27.03.2019 before S.B

  
Member

06.08.2018

Petitioner Aurangzeb in person present. Mr. Aziz Shah, Reader alongwith Mr. Kabirullah Khattak, Adll: AG for respondents present. The representative stated that the order of this Tribunal has been implemented, however, the petitioner is not satisfied as his counsel was not available today so the matter could not disposed off. Case to come up for arguments on 26.9.2018 before S.B.

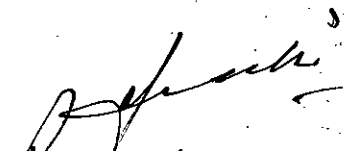
26.09.2018

Mr. Aurangzeb, petitioner in person <sup>present</sup> ~~Chairman~~ and requested for adjournment as his counsel is not in attendance. Mr. Kabirullah Khattak, Adll. AG for the respondents also present. Request of the petitioner is granted. To come up for arguments on 06.11.2018 before S.B.

  
Chairman

6-11-2018

*Due to Retirement of Honorable  
Chairman the Tribunal is non  
functional therefore the case is  
adjourned to come up for the  
same on 24-12-2018*

  
Reader

21.03.2018

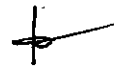
Learned counsel for the petitioner present. Mr. Kabir Ullah learned Additional Advocate General alongwith Ali Shah, Reader for the respondents present. Representative of the respondents seeks time for implementation report. Granted. To come up for implementation report on 30.05.2018 before S.B



Member

30.05.2018

Counsel for the petitioner and Addl: AG for respondent present. Counsel for the petitioner seeks adjournment. Adjourned. To come up for further proceedings on 04.07.2018 before S.B.



(Ahmad Hassan)  
Member

04.07.2018

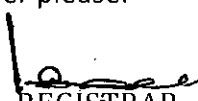


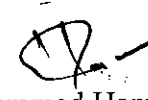
None present on behalf of the petitioner. Mr. Sardar Shoukat Hayat, Additional AG alongwith Mr. Aziz Shah, Head Constable for the respondents present. Implementation report not submitted. Requested for further adjournment. Adjourned. To come up for implementation report on 06.08.2018 before S.B. Notice be also issued to petitioner and his counsel for attendance for the date fixed.



(Muhammad Amin Khan Kundi)  
Member

FORM OF ORDER SHEET

Execution Petition No. 209/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	14.11.2017	<p>The Execution Petition of Mr. Aurang Zeb Khan submitted to-day by Mr. M. Fayyaz Mohmand Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 14/11/17</p>
2-	17/11/2017	<p>This Execution Petition be put up before S. Bench on <u>14/12/17</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
14.12.2017		<p>Counsel for the petitioner and Asst. AG for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 25.01.2018 before S.B.</p> <p style="text-align: right;"> (AHMAD HASSAN) MEMBER</p>
25.01.2018		<p>Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak, Learned Additional Advocate General for the respondents present and seeks time to file implementation report. Adjourned. To come up for further proceedings/implementation report on 21.03.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Hamid Mughal) MEMBER</p>

**BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition No. 209/17*

COC No. \_\_\_\_\_/2017

**AURANGZEB KHAN**

**VERSUS**

**Government of Khyber Pakhtunkhwa etc**

**INDEX**

S.No	Description	Annexure	Pages
1.	Contempt of Court petition		1-3
2.	Affidavit		4
3.	Order dated 11/07/2017	A	5-7
4.	Order dated OB No. 3380, dated 11/09/2017	B	8
5.	Wakalat Nama		End.

*Dated: 14/11/2017*

Through

Petitioner

*Fayaz Mohmand*  
**MUHAMMAD FAYAZ MOHMAND,**

Advocate,

High Court, Peshawar

Contact No. 03135476789

03459000466

**BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition No. 209/17*

COC No. \_\_\_\_\_/2017

**AURANGZEB KHAN**

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*Dated: 14/11/2017*

Through

Petitioner

*Muhammad Fayaz Mohmand*  
**MUHAMMAD FAYAZ MOHMAND,**  
Advocate,

High Court, Peshawar

Contact No. 03135476789

03459000466

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Direction of motion of particles?

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**BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition No. 209/2017*

COC No. \_\_\_\_\_/2017

946  
14-11-17

Aurangzeb Khan S/o Abdur Rauf Khan, Ex-Constable No. 2610,  
Resident of Mohallah Sheikhan, Attockay, P.O. Shabqadar,  
Charsadda.

... PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Rural, Peshawar.

... RESPONDENTS

(2)-  
**PETITION U/S 7-D OF SERVICE TRIBUNAL ACT 1974**  
**R/W SERVICE TRIBUNAL RULES NO.27 FOR**  
**INITIATING CONTEMPT OF COURT PROCEEDINGS**  
**AGAINST THE RESPONDENTS ACCORDINGLY, AND**  
**ALSO PASS THE DIRECTIONS TO IMPLEMENT THE**  
**ORDER DATED 11/07/2017 PASSED BY THIS**  
**HONOURABLE TRIBUNAL**

RESPECTFULLY SHEWETH,

1. That the petitioner filed an appeal no. 703/2015 before this Honourable Tribunal, where this Honourable Tribunal pleased to accept the appeal vide order dated 11/07/2017. (Copy of order dated 11/07/2017 is attached as annexure A).

①

**BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition No. 209/2017*

COC No. \_\_\_\_\_/2017

946  
14-11-17

Aurangzeb Khan S/o Abdur Rauf Khan, Ex-Constable No. 2610,  
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... PETITIONER

VERSUS

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**ALSO PASS THE DIRECTIONS TO IMPLEMENT THE**  
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**HONOURABLE TRIBUNAL**

RESPECTFULLY SHEWETH,

1. That the petitioner filed an appeal no. 703/2015 before this Honourable Tribunal, where this Honourable Tribunal pleased to accept the appeal vide order dated 11/07/2017. (Copy of order dated 11/07/2017 is attached as annexure A).

2. That vide the order this tribunal observed in Para no. 7 “in view of the foregoing and candid admission of appellant in his departmental appeal that he remained absent from duty, we are constrained to partially accept the instant appeal and modify / convert the major penalty of dismissal from service into reduction of two steps in time scale for a period of two years”.
3. That the respondent no.3 superintendent of police Headquarter Peshawar in partial compliance of the order mentioned above re-instated the petitioner in service on dated 11/09/2017, but the intervening period of absence and period out of service was treated as leave without pay. (Copy of order OB No. 3380/Dated 11/09/2017 is attached as annexure B) *copy of order*
4. That respondents by treating the absence & period out of service of petitioner as leave without pay have went beyond the scope and essence of judgment / order dated 11/07/2017 of this Honourable Tribunal, hence committed violation of the court order.
5. That as per the order dated 11/07/2017 the petitioner was already punished with reduction of two steps in times scale for a period two years, while respondents further punishing the petitioner by refusing to pay the petitioner outstanding salaries, which amounts to double jeopardy.
6. That the act of respondents is clear violation of the order of this Honourable Tribunal, hence respondents have acted in contempt.

3

7. That the petitioner has no other remedy but to approach this Honourable Court tribunal with the instant petition.

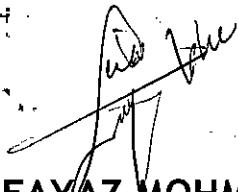
8. That other relevant points be brought in the notice of this Honourable Tribunal at the time of arguments.

Prayer:

It is, respectfully submitted that proceedings against the respondents may kindly be initiated and respondents be directed to implement the order in its true spirit and essence and respondents be further directed to grant the pay to the petitioner of the intervening period i.e. period of absence and period out of service.

Dated 14/11/2017 Through

Petitioner

  
MUHAMMAD FAYAZ MOHMAND,  
Advocate,  
High Court, Peshawar

SP Rural but also submitted a written application for leave. That after recovery the appellant reported for duty, but was informed to have been dismissed from his service. He preferred departmental appeal which was rejected, hence the instant service appeal.

3. Learned counsel for the appellant argued that during the course of posting of the appellant at Police Station Daudhai, Peshwar, he fell ill and upon examination by the doctor was advised one month bed rest. He submitted written application for leave to the SP Rural on 02.02.2012. Again after expiry of bed rest the appellant was examined by the doctor and recommended further rest for one month. After regaining health when the appellant went to join duty he came to know about his dismissal from service w.e.f. the date from absence vide impugned order dated 10.04.2012. He preferred departmental appeal which was rejected on 08.06.2012. The total absence period comes to 69 days. Learned counsel for the appellant further contended that the period of absence from duty was not deliberate and intentional rather he was forced by the circumstances. Enquiry was not conducted in the mode and manner prescribed by the rules. Ex-parte proceedings were initiated and concluded against him in violation of the judgment of the superior courts. He has 27 years service at his credit. The punishment awarded is very harsh and does not commensurate with the guilt/charges leveled against the appellant. He further prayed at the bar that keeping in view long service of the appellant the punishment awarded may be reduced/modified. He relied on 2008 SCMR 214 and judgment of this Tribunal dated 27.09.2014 passed in service appeal no. 1012/14.

4. Learned Assistant Advocate General in his reply assailed the arguments of the learned counsel for the appellant and stated that as a government servant he should have obtained leave even if he was ill. Absence from duty without permission of the Competent Authority amounts to misconduct. All the prescribed formalities were observed while imposing major penalty of dismissal from service upon the appellant.

Despite repeated reminders the appellant failed to join enquiry proceedings and the respondents were compelled to initiate ex-parte proceedings. The appeal being devoid of

any merit be dismissed with cost.

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Daudhai

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7. That the petitioner has no other remedy but to approach this Honourable Court tribunal with the instant petition.

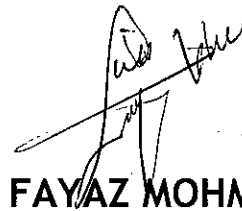
8. That other relevant points be brought in the notice of this Honourable Tribunal at the time of arguments.

Prayer:

It is, respectfully submitted that proceedings against the respondents may kindly be initiated and respondents be directed to implement the order in its true spirit and essence and respondents be further directed to grant the pay to the petitioner of the intervening period i.e. period of absence and period out of service.

Dated 14/11/2017 Through

Petitioner



MUHAMMAD FAYAZ MOHMAND,  
Advocate,  
High Court, Peshawar

(4)

**BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR**

COC No. \_\_\_\_\_/2017

**AURANGZEB KHAN**

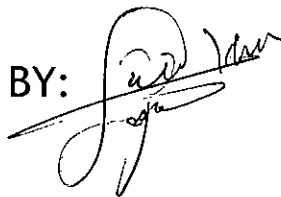
**VERSUS**

**Government of Khyber Pakhtunkhwa etc**

**AFFIDAVIT**

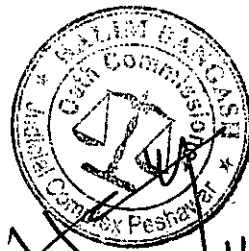
I, Aurangzeb Khan S/o Abdur Rauf Khan, Ex-Constable No. 2610, Resident of Mohallah Sheikhan, Attockay, P.O. Shabqadar, Charsadda, do hereby solemnly affirm and declare on oath that the contents of the accompanying contempt of court petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

IDENTIFIED BY:



**MUHAMMAD FAYAZ MOHMAND,  
ADVOCATE, HIGH COURT PEHSAWAR**

**ATTESTED**



14/11/17

**DEPONENT**

اورنگزیب

5

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.



**SERVICE APPEAL NO. 703/2015**

Date of institution ... 22.06.2015

Date of judgment ... 11.07.2017

Aurangzeb son of Abdur Rauf Khan Ex-Constable No.2610, resident of Mohallah Sheikhan, Attockay, P.O. Shabqadar, Charsadda.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Rural, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER NO. 13/SP-R, DATED 10.04.2015 OF RESPONDENT NO.3 WHEREBY THE APPELLANT WAS DISMISSED FROM HIS SERVICES AND AGAINST THE ORDER OF RESPONDENT NO.2 WHEREBY THE APPEAL OF THE APPELLANT WAS REJECTED VIDE ORDER NO.2923-28/PA, DATED 08.06.2015.

Mr. Muhammad Fayyaz Mohmand, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Assistant Advocate General

.. For respondents.


MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

MR. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

JUDGMENT

AHMAD HASSAN, MEMBER: Mr. Aurangzeb, hereinafter referred to as

appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against order no. 13/SP-R, dated 10.04.2015 of respondent no.3 whereby the appellant was dismissed from his service and against the order of respondent no.2 whereby the appeal of the appellant was rejected vide order no.2923-28/PA, dated 08.06.2015, hence the instant service appeal.

2. Brief facts of the case giving rise to the instant appeal are that the appellant was appointed as Constable and served at different stations with full zeal and commitment. That during his posting at Police Station Daudzai, Peshawar, he fell ill and upon examination doctor advised him one month bed rest. In this regard he not only informed



SP Rural but also submitted a written application for leave. That after recovery the appellant reported for duty, but was informed to have been dismissed from his service. He preferred departmental appeal which was rejected, hence the instant service appeal.

3. Learned counsel for the appellant argued that during the course of posting of the appellant at Police Station, Daudzai, Peshawar, he fell ill and upon examination by the doctor was advised one month bed rest. He submitted written application for leave to the S.P Rural on 02.05.2015. Again after expiry of bed rest the appellant was examined by the doctor and recommended further rest for one month. After regaining health when the appellant went to join duty he came to know about his dismissal from service w.e.f. the date from absence vide impugned order dated 10.04.2015. He preferred departmental appeal which was rejected on 08.06.2015. The total absence period comes to 69 days. Learned counsel for the appellant further contended that the period of absence from duty was not deliberate and intentional rather he was forced by the circumstances. Enquiry was not conducted in the mode and manner prescribed by the rules. Ex-parte proceedings were initiated and concluded against him in violation of the judgment of the superior courts. He has 21 years' service at his credit. The punishment awarded is very harsh and does not commensurate with the guilt/charges leveled against the appellant. He further prayed at the bar that keeping in view long service of the appellant the punishment awarded may be reduced/modified. He relied on 2008 SCMR 214 and judgment of this Tribunal dated 27.09.2014 passed in service appeal no. 1015/14.

4. Learned Assistant Advocate General in his reply assailed the arguments of the learned counsel for the appellant and stated that as a government servant he should have obtained leave even if he was ill. Absence from duty without permission of the Competent Authority amounts to misconduct. All the prescribed formalities were observed while imposing major penalty of dismissal from service upon the appellant. Despite repeated reminders the appellant failed to join enquiry proceedings and the respondents were compelled to initiate ex-parte proceedings. The appeal being devoid of any merit be dismissed with cost.

ATTESTED

EXAMINER  
Khushwant Singh  
Services Tribunal,  
Peshawar

5. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General for the respondents and have gone through the record available on file.

6. Having gone through the record, it transpired that under Leave rules, 1981, leave on medical ground cannot be refused. The competent authority has the power to refer the case to the Standing Medical Board for opinion. Enquiry proceedings were conducted at the back of the appellant and as such the opportunity of fair trial, as enshrined in Article 10-(A) of the constitution was not provided. It is a well settled principle that no one should be condemned unheard. Show cause notice before imposition of penalty and opportunity of personal hearing was not afforded to the appellant. Similarly impugned penalty of dismissal from service from the date of absence is void as awarding punishment with retrospective effect is against the spirit of Article-12 of the constitution. Perusal of the record shows that imposition of major penalty of dismissal from service does not commensurate with the period of absence from duty and that too when circumstances were beyond his control as such the punishment seems too harsh.

7. In view of the foregoing and candid admission of appellant in his departmental appeal that he remained absent from duty, we are constrained to partially accept the instant appeal and modify/convert the major penalty of dismissal from service into reduction of two steps in time scale for a period of two years. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED:  
11.07.2017

SD/- Ahmad Hassan, Member  
SD/- M. Hamid Mughal, Member

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 10-11-2017  
Number of Words 1200  
Copying Fee 800  
Urgent 200  
Total 1000  
Name of Certifier [Signature]  
Date of Completion of Copy 10-11-17  
Date of Delivery of Copy 10-11-17

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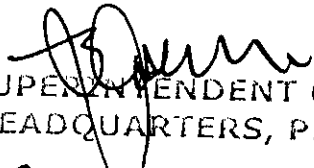
ORDER

Ex-Constable Aurangzeb No.2601 was awarded major punishment of dismissal from service by the then SP-Rural vide OB No.1394 dated 10.04.2015 on the charges of absence for a period from 31.01.2015 to 10.04.2015 (69-days).

He filed an appeal before CCPO, Peshawar against the above mentioned orders which was rejected/filed by the then CCPO, Peshawar vide No.2923-28/PA dated 08.06.2015.

Ex-Constable Aurangzeb No.2601 has submitted an application alongwith court Judgment, wherein the court of Hon'able Service Tribunal ordered that the appellant may be re-instated in service & modify/convert the major punishment of dismissal from service into reduction of two steps in time scale for a period of two years.

In light of the Court Judgment, DSP Legal Opinion & kind approval of W/CCPO, Ex-Constable Aurangzeb No.2601 is hereby re-instated in service with immediate effect and major punishment of reduction to lower stage of time scale for a period of 02-years with immediate effect. Hence, the intervening period i.e period of absence & period out of service is treated as leave without pay.

  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

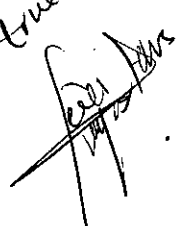
OB. NO. 3380 / Dated 11 / 9 / 2017

No 4398-4405/PA/SP/dated Peshawar the 12 / 9 / 2017

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

Attested to  
be true copy

  
14/11/2017

قیمت  
50 روپے



14686

ایڈوکیٹ: M. Fayaz Mohmand

بار کونسل ایسوسی ایشن نمبر: B-C-13-4344

رابطہ نمبر: 03459000466

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

K.P. Service Tribunal, Peshawar

بعدالت جناب:

مخائب: سائل -	دعویٰ: Contempt/execution -
ادار نگریٹ بینام حکومت واپس	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

**باعت تحریر آنکہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام لیشاور کیلئے محمد ضیا ضی صہمند ایڈوکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

14/11/2017

المرقوم:

المرقوم: گواہ شد

مقام K.P. سروس سٹراٹجی، لیشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

14/11/2017

ادار نگریٹ بینام حکومت واپس

1870

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