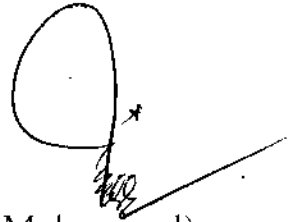


16.11.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.


Reply/comments on behalf of respondents not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of reply/comments. Last opportunity is granted. To come up for reply/comments on 19.12.2022 before S.B.


(Mian Muhammad)
Member (E)

19.12.2022

Learned counsel for the appellant present. Mr. Muhammad Suleman, Senior Instructor alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Para-wise comments on behalf of respondents submitted, copy of which handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 16.03.2022 before the D.B.


(Salah-Ud-Din)
Member (J)

SCANNED
KIBT
Peshawar

SCANNED
KIBT
Peshawar

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

In the matter of

Service Appeal No. 7572/2021

Sami ullah s/o Sher Ali ,Ex-Warder R/o Khojram Khel P.O Mandori Pital Shah
Tehsil & District Bannu.(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa Home & Tribal Affairs department, Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
3. The Superintendent, Circle Headquarter Prison D.I.Khan.
4. The Incharge Interment Centre Lakki Marwat
5. The Superintendent Central Prison Peshawar..... (Respondents)

INDEX

S.NO.	DESCRIPTION OF DOCUMENTS	Annex	Page No.
1-	Joint Para-wise comments	-	1-4
2-	Affidavit	-	5
3-	Penalties	A	
4-	Superintendent Central Prison Peshawar office letter dated 28-04-2021	B	
5-	Show cause Notice dated 06-05-2021	C	
7-	Written reply to the Show Cause Notice dated 24-05-2021	D	
8-	Final Show Cause Notice dated 26-05-2021	E	
10-	Superintendent Headquarter D. I Khan office letter dated 23-06-2021 (pertaining to compulsory retirement from service)	F	
11-	Departmental appeal	G	
12-	IG Prison office order dated 27-08-2021	H	


Deponent

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of

Service Appeal No. 7572/2021

Sami ullah s/o Sher Ali ,Ex-Warder R/o Khojram Khel P.O Mandori Pital Shah Tehsil & District Bannu.....(Appellant)

VERSUS

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3. The Superintendent, Circle Headquarter Prison D.I.Khan.
4. The Incharge Interment Centre Lakki Marwat
5. The Superintendent Central Prison Peshawar..... (**Respondents**)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO 01 TO 05

Respectfully Sheweth;

Preliminary objections

- a. That the appellant has got no locus standi to file appeal against the Respondents before this Honb'le Tribunal.
- b. That the appellant is estopped by his own conduct to file the instant appeal.
- c. That the appellant has concealed material facts from this Honb'le Tribunal.
- d. That the appellant has no cause of action against the Respondents.
- e. that the present service appeal is badly time barred.
- f. That the present appeal is bad for mis joinder and non-joinder of necessary parties.

OBJECTION ON FACTS

1. Correct to the extent that the appellant was appointed as warder in prisons department Khyber Pakhtunkhwa, however, he has never been interested in his duties which is evident from the fact that there are 19 red entries in his service book. Details of penalties awarded to him are given as (**Annexure-A**).
2. That the appellant was appointed as Warder and has not been promoted to any other rank.
3. That the Superintendent Central Prison Peshawar (respondent No.05) reported vide No. 1304/we dated 28.04.2021 (**copy attached as Annexure B**) that Ex-Warder Sami Ullah S/o Sher Ali have absented himself from line and duty w.e.f 30.03.2021 without any permission which was a gross misconduct. Therefore, show cause notice vide No. 1644-45 dated 06.05.2021 (**copy attached as Annex-C**) was sent on his home address with personal hearing date fixed for 18.05.2021 (**copy of personal hearing as Annex-D**) but he did not appear for personal hearing on due date. He submitted his written reply which was received to respondent No.03 on 24.05.2021 (**reply is Annexure E**) and was found unsatisfactory. Therefore final show cause notice vide No. 1950-52 dated 26.05.2021 (**copy attached as Annexure F**) was sent on his home address with personal hearing date fixed for 02.06.2021 (**Annexure G**). The appellant appeared for personal hearing on due date but could not justify his absence. Therefore, keeping in view his past record he was awarded major penalty of Compulsory retirement from service.(**Order of compulsory retirement from service is Annexure-H**).

4. As elaborated in para-3 above.
5. That the appellant has not submitted any medical documents regarding his illness and from the past record of the appellant it is evident that he is malingerer and has no interest in duties. In case of illness he was required to submit an application to Superintendent Jail being the competent authority under Rule-1083 of KP Prison Rule-2018 but as such nothing has been provided by the appellant and violated the mandatory provision of the rule *ibid*.
6. Admitted to the extent that he was awarded to the major penalty and consequently he preferred departmental appeal which met the same fate. **(Copy of final order is attached as Annexure I).**
7. No comments.

OBJECTION ON GROUNDS.

- A. That the orders of removal from service passed by the Superintendent Circle Head Quarter Prison DI Khan (respondent No.03) No. 2071 dated 03.06.2021 and order of Inspector General of Prisons Khyber Pakhtunkhwa Peshawar (**Respondent No.02**) No. 27652 dated 27.08.2021 are lawful, legal and based on facts and no discrimination have been committed by the respondents to the appellant and treated him under Law/Rules.
- B. That legal proceeding has been carried out against the appellant. Ample opportunities were granted to the appellant to defend himself. Proper disciplinary proceedings were carried out. Show cause notice vide No. 1644-45 dated 06.05.2021 and final show cause Notice No. 1950-52 dated 26.05.2022 were served upon the appellant with personal hearing opportunity on 18.05.2021, 02.06.2021 & 25.08.2021.
- C. As elaborated in Para-b of objection on grounds.
- D. Correct to the extent that the appellant has long service but full of red entries. List red entries is given as following:-

S.#	Detail of penalties awarded
01	Unauthorized absence at CP Bannu period with effect from 15-02-2008 to 20-03-2008 (35 Days treated as leave with out pay vide Superintendent C/HQ D.I. Khan Jail No.452-54 dated 04-08-2008
02	02-03-2009 unauthorized absence at CP Bannu period with effect from 11-02-2009 to 01-03-2009 treated as leave with out pay vide Superintendent CP Bannu Jail No.416dated 02-03-2009
03	14-03-2012 On account of escape case at Cp Bannu of the condemned prisoners awarded punishment of stoppage One increment for one Year vide Superintendent C/HQ D.I.Khan vide No. 381-84 dated 13-03-2012
04	27-09-2012 Censured " at CP Karak , vide Superintendent Circle H/Q D.I.Khan-vide No. 6286-92 dated 25-09-2012
05	05-10-2012 Awarded Punishment of stoppage of two annual increment for his will full absence for (52) days and period of absence treated as leave without pay at CP Karak, vide Superintendent, HQ Prison D.I.Khan No. 6270-74 dated 24-09-2012.
06	21-08-2013 Suspended at CP D.I.Khan for his absence vide

	Superintended HQ D.I. Khan No. 93447 dated 06-08-2013
07	21-08-2013 Reinstated and Stoppage of one increment at CP D.I.Khan vide Superintendent HQ D.I.Khan No. 9775 dated 21-08-2013
08	23-07-2014 Censured and directed to the care full in future at CP Bannu in vide Superintendent HQ D.I.Khan No. 8388 dated 23-07-2014
09	Absence period w.e.f 06-02-2016 to 10-02-2016 (05 Days) and absence period from 15-03-2016 to 19-03-2016 (04 Days) treated as leave without pay vide Superintendent HQ prison Mardan No. 1281-82 dated 07-03-2016 and No. 2054-55 dated 09-04-2016 respectively.
10	07-01-2016 absent period with effect from 16-10-2015 to 20-10-2015 treated as leave without pay vide Supdt HQ Mardan No. 3604-06 dated 07-01-2016
11	07-01-2016 absent period with effect from 6-11-2015 to 16-11-2015 (10 Days) treated as leave without pay vide Supdt HQ Mardan No. 3648-50 dated 07-01-2016.
12	06-01-2016 absent period with effect from 04-12-2015 to 17-12-2015 treated as leave without pay Vide Supdt HQ Mardan No. 567-72 dated 06-01-2016
13	4-10-18 warned to be careful in future vide supdt HQ Prisons Bannu 66820 dated 4-10-18
14	19-10-18 "Censured" for leaving his duty place at CP Bannu vide Supdt HQ Prisons Bannu No.7144 dt 19-10-2018
15	13-7-2020 Stoppage of two annual Increments for Two Years for will ful absence at CP Bannu and misconduct for not appearing before Inquiry officer and the Absence Period from 24-3-20 to 12-4-20 treated as leave without pay Vide Supdt HQ Prison D.I.Khan.
16	17-2-21 "Censured" and absent period wef. 21-01-21 to 4-2-21 at Internment Centre lakki Marwat treated as leave without Pay Vide supdt HQ Prison Dikhan No.508-12 dt 12-2-21
17	8-4-21. Major Penalty "Reduction to Lowest stage in present time pay scale for two years" for his wilful absence period at CP Peshawar (attached for temporary duties) and absence period from 14-2-2021 to 09-03-2021 treated as leave without pay vide Supt D.I. Khan No. 923-27 dated 11-03-21
18	3-05-21 Stoppage of one increment for One year for his wilful absence at Internment Centre Lakki Marwat and absence period from 10-03-21, to 18-03-21 treated as leave without Pay Vide Supt HQ D.I. Khan No. 1439-42 dated 21-04-21
19	03-06-21 Major Penalty of Compulsory retired from service for his will full absence at Internment Centre Lakki Marwat and absence period from 30-03-21 to 01-06-21 treated as leave without pay vide Supdt HQ D.I.Khan No. 2072-76 dated 03-06-21

E. As elaborated in Para-b of objection on grounds.

F. As elaborated in Para- b of objection on facts.


G. That the respondents had no personal grudges with the appellant and his past service record reveals that he has never been interested in his duties keeping in view the sensitivity of his job being Uniform Force Service. The appellant badly failed to inform the competent


authority well within time about his illness inspite he was required to follow Rule-1083 of the rule ibid. (**Relevant Rule is attached as Annexure L**).


- H. As elaborated in Para-03 of facts and Para-b of objection.
- I. As elaborated in Para-03 of facts and Para-b of objection.
- J. That the past record of the appellant as elaborated in Para-D of objection on grounds shows that appellant had never been interested in duties.
- K. No comments.
- L. Any additional documents/points will be raised during the arguments with a prior permission of the Honourable Tribunal.


PRAYER:


It is therefore most humbly prayed that on acceptance of this instant reply/Para-wise comments on behalf of respondent No. 1 to 5 the appeal of the appellants may kindly be dismissed be devoid of merit & Law.

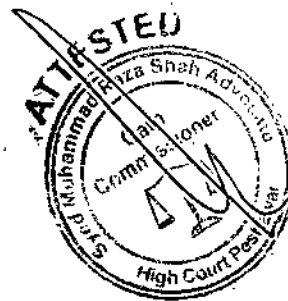

**SECRETARY TO GOVERNMENT
HOME & TAS DEPARTMENT
KHYBER/PAKHTUNKHWA
RESPONDENT NO.01**


**INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA
PESHAWAR
RESPONDENT NO.02**


**SUPERINTENDENT
CIRCLE HEADQUARTER PRISON
D.I.KHAN
RESPONDENT NO.03**


**SUPERINTENDENT
INTERNMENT CENTRE
LAKKI MARWAT
RESPONDENT NO.4**


**SUPERINTENDENT
CENTRAL PRISON PESHAWAR
RESPONDENT NO.05**



BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

In the matter of

Service Appeal No. 7572/2021


Sami ullah s/o Sher Ali ,Ex-Warder R/o Khojram Khel P.O Mandori Pital Shah
Tehsil & District Bannu.....(Appellant)


VERSUS

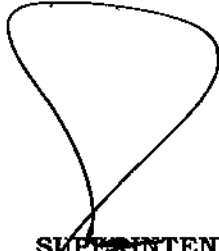
1. The Government of Khyber Pakhtunkhwa Home & Tribal Affairs department, Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar.
3. The Superintendent, Circle Headquarter Prison D.I.Khan.
4. The Incharge Interment Centre Lakki Marwat
5. The Superintendent Central Prison Peshawar..... (Respondents)


COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1 to 5


We the following respondents do hereby solemnly affirm and declare that the contents of Joint Para-wise Comments are true and correct to the best of our Knowledge and belief and nothing have been concealed from this Honorable Service Tribunal.


SECRETARY TO GOVERNMENT
HOME & TAS DEPARTMENT
KHYBER PAKHTUNKHWA
RESPONDENT NO.01


SUPERINTENDENT
CIRCLE HEADQUARTER PRISON
D.I.KHAN
RESPONDENT NO.03


SUPERINTENDENT
CENTRAL PRISON PESHAWAR
RESPONDENT NO.05


INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA
PESHAWAR
RESPONDENT NO.02


INCHARGE
INTERMENT CENTRE
LAKKI MARWAT
RESPONDENT NO.4





C. As elaborated in Para-b of objection on grounds.

D. Correct to the extent that the appellant has long service but full of red entries. List red entries is given as following:-

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05	05-10-2012 Awarded Punishment of stoppage of two annual increment for his will full absence for (52) days and period of absence treated as leave without pay at CP Karak, vide Superintendent HQ Prison D.I.Khan No. 6270-74 dated 24-09-2012
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12	06-01-2016 absent period with effect from 04-12-2015 to 17-12-2015 treated as leave without pay Vide Supdt HQ Mardan No. 567-72 dated 06-01-2016
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18	3-05-21 Stopage of one increment for One year for his willfull absence at Internment Centre Lakki Marwat and absence period from 10-03-21 to 18-03-21 treated as leave without Pay Vide Supt HQ D.I. Khan No. 1439-42 dated 21-04-21
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Table-B

S. #	Detail of penalties awarded
01	Unauthorized absence at CP Bannu period with effect from 15-02-2008 to 20-03-2008 (35 Days) treated as leave with out pay vide Superintendent C/HQ D.I. Khan Jail No.457-54 dated 04-08-2008
02	02-03-2009 unauthorized absence at CP Bannu period with effect from 11-02-2009 to 01-03-2009 treated as leave with out pay vide Superintendent CP Bannu Jail No.416 dated 02-03-2009
03	14-03-2012 On account of escape case at CP Bannu on the condemned prisoners, awarded punishment of stoppage One increment for one Year vide Superintendent C/HQ D.I.Khan vide No. 381-84 dated 13-03-2012
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12	06-01-2016 absent period with effect from 04-12-2015 to 17-12-2015 treated as leave without pay Vide Supdt HQ Mardan No. 567-72 dated 06-01-2016
13	4-10-18 warned to be careful in future vide supdt HQ Prisons Bannu 66820 dated 4-10-18
14	19-10-18 " Censured" for leaving his duty place at CP Bannu vide Supdt HQ Prisons Bannu No.7144 dt 19-10-2018
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91
SUPERINTENDENT
CIRCLE HQS PRISON DIKHAN

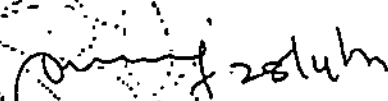
OFFICE OF THE
SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
No: 1304/48 B Dt: 28/04/2021

The Superintendent,
Headquarters Prison D.I Khan.

Subject: DISCIPLINARY ACTION.
Memo;

Enclosed please find herewith a copy of Superintendent Central Prison Peshawar letter No. 4734/WE dated 26-04-2021 to state that as per report of the Line Officer (Copy enclosed) Warder Sami Ullah and Shafqat Ali attached for the purpose of duty at this Jail has willfully absented themselves from their allotted duties w.c.f 20-03-2021 and still at large which constitute gross misconduct.

Therefore, it is requested that their salaries may be stopped immediately and disciplinary action against the said warder may be taken under the rules.


SUPERINTENDENT
HEADQUARTERS PRISON PESHAWAR
E-mail: hqprisonpeshawar@gmail.com



SHOWCAUSE NOTICE UNDER RULE-5 (I) READ WITH RULE-7 OF THE
KHYBER PUKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY &
DISCIPLINE) RULES.2011.

You warder (BPS-07) Sami Ullah s/o Sher Ali attached to Central Prison Peshawar for duty purpose and for pay purpose attached to Internment Centre Lakki Marwat have absented yourself from duty and line premises of Central Prison Peshawar w.e.f 30.03.2021 and still at large which is a gross misconduct on your part.

I, Muhammad Binyamin Superintendent Headquarter Prison DIKhan competent authority, am satisfied by the report submitted by the Superintendent Central Prison Peshawar and there is no need of holding any further inquiry.

Now therefore, you above named warder are hereby called upon to show cause Within 07 days of receipt of this notice as to why the punishment of Removal from Service may not be awarded to you for your above stated act of negligence and mis-conduct.

In case your reply does not reach this office within stipulated period ex-party Action shall be taken against you.


You may appear before the undersigned for personal hearing on 18-05-2021, if you wish to.


SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

Endst No.. 1644-45 dated 06/05/2021

Copy of the above is forwarded to :-

1. Superintendent Head Quarter Prison Peshawar for information w/r to his No. 1304-we dated 28.04.2021
2. Warder (BPS-07) Sami Ullah s/o Sher Ali R/O village Khojuram P.O Mandori Pital Shah Tehsil and District Bannu. 0333-9982942


SUPERINTENDENT
CIRCLE H/QS PRISON DIKHAN

FINAL SHOW CAUSE NOTICE

I. Binyamin Khan Superintendent Headquarter Prison D.I.Khan, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, do hereby serve you Warder BPS-07 Sami Ullah s/o Sher Ali attached to Internment Centre Lakki Marwat for duty purpose and for pay purpose attached to Central Prison Peshawar as follow;

1. (i) that consequent upon show cause notice served upon you under Khyber Pakhtunkhwa Peshawar Govt Servants Efficiency and Disciplinary Rule 2011.

(ii) On going through the findings and the material on record and other connected papers including your defence. I am satisfied that you have committed the following acts / omissions specified in rule-3 of the said rules;

You Warder (BPS-07) Sami Ullah s/o Sher Ali attached to Internment Centre Lakki Marwat fro duty purpose and for pay purpose attached to Central Prison Peshawar have absented yourself from duty as well as jail premises w.e.f 30.03.2021 without permission of the competent authority and did not resume back your duty. Show cause notice vide No. 1644-45 dated 06.05.2021 was sent on your home address but neither you resumed your duty nor you appeared for personal hearing.

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Removal From Service under rule-4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply o this notice is received within seven days or no more than fifteen days of its delivery, it shall be assumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

5. You can appear for personal hearing before the undersigned on 02-06-2021, if you wish to.

SUPERINTENDENT
CIRCLE HQS PRISON DIKHAN

Encls No. 1950-52 dated 26/05/2021

Copy of the above is forwarded to :-

1. Inspector General Of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. Superintendent Central Prison Peshawar for information, a copy of show cause notice duly signed / dated by the accused warder may please be returned to this Headquarter as a token of receipt and office record.
3. Warder (BPS-07) Sami Ullah s/o Sher Ali Resident of village Khojoram P.O Mandori Pital Shah Tehsil and District Bannu. 0333-9982942

SUPERINTENDENT
CIRCLE HQS PRISON DIKHAN

BA/B
Compulsion redink,
was incongrite.



OFFICE ORDER

WHEREAS, the accused Mr.Sami Ullah s/o Sher Ali warder attached to Internment Centre Lakki Marwat for pay purpose and for duty purpose attached to Central Prison Peshawar was proceeded against under Rule-3(b)(d) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges that he absented himself from duty as well as jail premises w.e.f 30.05.2021 to 01.06.2021.

AND WHEREAS, he furnished reply but the same was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 02.06.2021 as provided for under rules ibid. The accused official completely failed to defend his case with documentary proof/evidence.

NOW therefore, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record, the explanation of the accused official and after affording the opportunity of personal hearing, the undersigned being competent authority, hereby award Major penalty of "COMPULSORY RETIRED FROM SERVICE" to Mr. Sami Ullah s/o Sher Ali warder attached to Internment Centre Lakki Marwat for pay purpose and for duty purpose attached to Central Prison Peshawar for his willful absence. The period of his absence w.e.f 30.05.2021 to 01.06.2021 is hereby treated as Leave Without pay.

SUPERINTENDENT
 CIRCLE HQ/PS PRISON DIKHAN

Orderment No. 2072-76 23-06-21

Copy of the above is forwarded to :-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The superintendent Central Prison Peshawar for information and necessary action please.
3. The Superintendent Internment Centre Lakki Marwat. Necessary entry may please be made in the Service Book of official concerned under proper attestation.
4. DAO Lakki Marwat.
5. Warder Sami Ullah s/o Sher Ali attached to Central Prison Peshawar.

Handwritten signature and date 30/6/21

SUPERINTENDENT
 CIRCLE HQ/PS PRISON DIKHAN

Annex-C
16

قلم سیکریٹری لیشاور KPK

حکمانہ اپیل

فاضل عالی! حکمانہ اپیل بدخلاف حکم حوض 3/6/21، 15938، حصہ IG، صل فائزہ قات
من سائل حکم صل قات میں حوض 12/18/2004 برقی ہوکر اپنی ڈیوٹی نہایت خوش اسلوبی
سے ادا کرتا رہا اور کبھی بھی افسران بالا کو شکایت کا موقع نہیں دیا۔

فاضل عالی! من سائل حوض 2/10 کو بہت سخت بیمار ہو گیا میں وہ
2021 MS ڈسٹرکٹ ہیڈ کوارٹر ہسپتال میں 3 مہینے سیدھے رہا اور
لحدہ دوبارہ MS صاحب نے حوض 3/9 کو چیک اپ کرنے کے بعد سرٹیفکیٹ
دیا، جملہ دستاویزات لف ہیں۔ من سائل کی غیر حاضری قطعی قصداً نہ تھی
بلکہ وجوہات بالا تھیں۔

فاضل عالی! من سائل نے اپیل صاحب گزارا جو بروٹے حکم زیر اپیل
خارج کی گئی میں وہ اچھا۔ کو حکمانہ اپیل دیکر کی۔ من سائل نہایت
غریب شخص ہے اور سارا خاندان کا واحد کفیل ہیں۔
فاضل عالی! حکم صاحب 16 صاحب خلاف قانون، خلاف ریکارڈ، جو
قابل مسوغی ہے، لالعدم قرار دیا جا کر سائل کو ملازمت پر بحال کیا جاوے۔

من سائل Personal Hearing بھی کرنا چاہتا ہوں۔


سیدہ الوجہات بالا اپیل منظور فرما کر سائل کو ملازمت پر بحال کیا
سائل تاحیات دعاگو رہے گا۔

سائل: سمیع اللہ ولد شیر علی سالقہ وارڈ سٹریٹ محل لیشاور
حال چکڈاواں مندوری تیل شاہ ضلع بنوں
0333 9982942

ATTESTED

30.05.2022

Learned counsel for the appellant present and requested for adjournment to further prepare the brief. Adjourned. To come up for preliminary hearing on 25.07.2022 before S.B.


(Mian Muhammad)
Member (E)

25.07.2022

Appellant present through counsel.

Preliminary arguments heard. Record perused.


Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections with direction to appellant to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for reply/comments. To come up for written reply/comments on 11.10.2022 before S.B.


(Rozina Rehman)
Member (J)

11.10.2022

Junior to counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Written reply on behalf of respondents not submitted. Learned Additional AG seeks time to contact the respondents for submission of written reply. Adjourned. To come up for written reply/comments on 16.11.2022 before S.B.



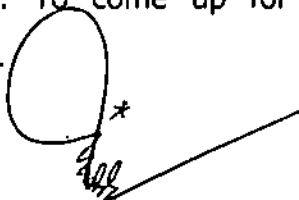


(Fareeha Paul)
Member (E)

Rs 700/-
Appellant Deposited
Security & Process Fee
2/8/22

FORM OF ORDER SHEET

Court of _____

Case No.- 7572 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/10/2021	<p>The appeal of Mr. Samiullah presented today by Mr. Attiq-ur-Rehman Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	16.12.2021	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>16/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
F-3-2022	16.12.2021	<p>Clerk of learned counsel for the appellant present.</p> <p>Former requests for adjournment on the ground that learned counsel is not available today. Adjourned. To come up for preliminary hearing on 01.03.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p> <p>Due to retirement of the Honorable ... chairman the case is adjourned to come up for the same as before on 30/5/2022</p> <p style="text-align: right;"> Reader</p>

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No:- _____-P/2021

Sami Ullah (Warder) S/O Sher Ali
R/O Khojuram P.O Mandori Pital Shah Tehsil & District Bannu

..... APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar
3. Superintendent Headquarters Prisons, D.I Khan
4. In charge Interment Center Lakki Marwat
5. Superintendent Central Prison Peshawar

.....RESPONDENTS



APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 23/06/2021 WHEREBY THE APPELLANT WAS COMPULSORY RETIRED FROM SERVICE AND THEREAFTER THE APPELLANT CHALLENGED THE SAID ORDER THROUGH DEPARTMENTAL APPEAL, WHICH WAS DISMISSED VIDE ORDER DATED 27/08/2021 ARE ILLEGALLY, UNLAWFULLY, BASED UPON MALA-FIDE AND UNCONSTITUTIONALLY.

Prayer in Appeal:

On acceptance of instant appeal, the orders dated 23/06/2021 and order dated 27/08/2021 upon the departmental appeal may kindly be set aside and consequently the appellant may kindly be re-instated on his post with all back benefits whatsoever.

Respectfully Sheweth:-

.....

1. That the appellant was enlisted in the Prisons Department in the year, 18/12/2004 and the appellant since the date of appointment was very punctual and has performed his duties to the entire satisfaction of his seniors and colleagues.
2. That the appellant was gradually on his term legally and lawfully promoted and was lastly posted and promoted as Warder in the KP Prisons Department and was performing his duties as Warder at Internment Centre Lakki Marwat.
3. That astonishingly the appellant was illegally removed from his service without any proper inquiry no show cause notice was served upon the appellant.
4. That without any show cause, explanation, personal hearing and without providing any opportunity to the appellant to cross examine the witnesses who have allegedly recorded their statements and ultimately the Superintendent Circle H/QS Prison DI Khan awarded major punishment vide order dated 23/06/2021 of Compulsory Retirement of the appellant from his service. **(Copy of the impugned order is Annexure "A")**.
5. That the appellant was seriously ill from 30-03-2021 to 01-06-2021 and couldn't report on duty for the reasons beyond his control so the impugned order is against the appellant was absolutely based upon malafidely and personal grudges with the appellant. It is further stated that no opportunity of cross-examination the witnesses by the appellant. **(Copy of Medical Documents are attached as annexure "B")**.
6. That the appellant was feeling aggrieved from the compulsory retirement order dated 23/06/2021, filed the departmental appeal and the same was dismissed vide order dated 27/08/2021. **(Copy of departmental appeal and appellant order is Annexure C-C1)**

3

7. That feeling aggrieved from order impugned orders the appellant approach this Honorable Tribunal on the following grounds inter alia:-

Grounds:-

- A. That the impugned orders are illegal, unlawful and not based upon the real facts, hence not tenable in the eyes of law.
- B. That the impugned orders of respondents are illegal as no explanation, show cause or final show cause, opportunity of personal hearing has been given to the appellant so by violating the law, rules and regulation, the impugned orders are not maintainable, liable to be set aside.
- C. That the opportunity of cross examination of official/witnesses who has allegedly record the statements against the appellant, has not provided to the appellant to dig-out the real facts so the bare statements without cross examination does not carry any value in the eyes of law, which is the only and weak source upon which the orders have been passed against the appellant, so on this ground alone the said orders are not maintainable/sustainable.
- D. That the appellant has a very long spotless service of almost 17 years, but the respondents have malafidely passed the impugned orders without considering his long service for the said department so the impugned orders are very harsh and not based upon the real facts so on this ground too the impugned orders are liable to be struck down.
- E. That the actions and orders taken against the appellant or not after proper explanation, show cause and even no opportunity of personal hearing has been provided to the appellant so the orders are illegal,

irregular, unlawful and has no support of the law so the same are liable to be brush aside.

- F. *That no proper inquiry conducted by the inquiry officer and recommended the major punishment of compulsory retirement for the appellant from his service so therefore, the said recommendations were not impartial and based upon malafidely and malice, the same has no value in the eyes of law.*
- G. *That the actions/orders against the appellant has no support of law and facts except personal grudges with the appellant had been marked as absent despite the fact the illness of the appellant was communicated to the Respondents by the appellants family member, so the impugned orders are illegal, unlawful and based upon mala-fide, not maintainable and liable to be set aside.*
- H. *That the appellant had not been treated in accordance with law, hence his right has been secured, guaranteed by the law and constitution, but the same has been badly violated by the respondents.*
- I. *That no proper procedure has been adopted before the compulsory retirement of the appellant from his service and the appellant has never served with any charge sheet or show cause notice non has been any inquiry been conducted the impugned orders are thus passed in violation of the principles of natural justice.*
- J. *That the absence of the appellant was not intentional but due to his illness so the penalty of compulsory retirement from service is harsh.*
- K. *That the appellant is the sole bread earner of his family, however, his compulsory retirement from service has exposed him and his family to great hardships.*

5




L. That any other grounds will be taken at the time of arguments with kind permission of this Honorable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this Service Appeal, the order dated 23/06/2021 and the order dated 27/08/2021 upon the departmental appeal may kindly be set aside and consequently the appellant may kindly be re-instated on his post with all back benefits whatsoever.

Any other remedy which deems fit by this Honorable Tribunal may also be granted in favour of appellant.

Dated:- ___/09/2021

Through:-


Appellant 

Attiq Ur Rehman
Advocate High Court
Peshawar.

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No:- _____ -P/2021

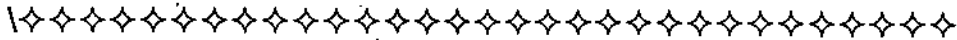
Sami Ullah

Versus

Govt: of KPK & others

..... Appellant

..... Respondents



AFFIDAVIT

I, Sami Ullah (Warder) S/O Sher Ali R/O Khojoram P.O Mandori Pital Shah Tehsil & District Bannu (The appellant) do hereby solemnly affirm and declare on oath that the contents of this accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Khaliq Mahmood
Oath Commissioner
Peshawar High Court

[Handwritten signature]
11-10-

[Handwritten signature]

DEPONENT

CNIC No:-

Cell No:- 0301 8904498

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Sami Ullah

Versus

Govt: of KPK & others

..... Appellant

..... Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:-

1. That the above captioned Service Appeal has been filed by the petitioner and no date of hearing has yet been fixed.
2. That the facts and grounds of main appeal may kindly be considered as integral part of this application.
3. That the appellant received the order dated 27-08-2021 on 06-09-2021 lately due to non-availability of concern, at quarters concern that is why the appeal was delayed and when receive the instant appeal has been filed.
4. That the instant delay was not intentional, but due to reason mentioned above and was not in the control of the applicant/appellant, hence needs consideration of this Honorable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this application the delay, if any, in filing the above noted appeal, the delay may kindly be condoned in the interest of justice in the instant petition.

Through

Appellant


Attiq Ur Rehman
Advocate High Court

Date: __/09/2021



(10)

Annex-H

OFFICE OF THE SUPERINENDENT
PRISONS CIRCLE HEAD QUARTER D.I.KHAN
No. 2071 / PB Date 23-06-2021
PH&FAX \No. 0966-9280299
cpdikhan1@gmail.com

OFFICE ORDER

WHEREAS, the accused Mr.Sami Ullah s/o sher Ali warder attached to Internment Centre Lakki Marwat for pay purpose and for duty purpose attached to Central Prison Peshawar was proceeded against under Rule-3(b)(d) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges that he absented himself from duty as well as jail premises w.e.f 30.03.2021 to 01.06.2021.

AND WHEREAS, he furnished reply but the same was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 02.06.2021 as provided for under rules ibid. The accused official completely failed to defend his case with documentary proof/evidence.

NOW therefore, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, having considered the charges, evidence on record, the explanation of the accused official and after affording the opportunity of personal hearing, the undersigned being competent authority, hereby award Major penalty of "COMPULSORY RETIRED FROM SERVICE" to Mr. Sami Ullah s/o Sher Ali warder attached to Internment Centre Lakki Marwat for pay purpose and for duty purpose attached to Central Prison Peshawar for his willful absence. The period of his absence w.e.f 30.03.2021 to 01.06.2021 is hereby treated as Leave Without pay.

SUPERINTENDENT
CIRCLE HQS PRISON DIKHAN

Endorsement No. 2072-76

Copy of the above is forwarded to :-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information please.
2. The superintendent Central Prison Peshawar for information and necessary action please.
3. The Superintendent Internment Centre Lakki Marwat. Necessary entry may please be made in the Service Book of official concerned under proper attestation.
4. DAO Lakki Marwat.
5. Warder Sami Ullah s/o Sher Ali attached to Central Prison Peshawar.

Handwritten signature and date 30/6/21 in Urdu script.

SUPERINTENDENT
CIRCLE HQS PRISON DIKHAN

ATTESTED

M.T.I DHQ Teaching Hospital Bannu

Out Patient Department

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Name: [Handwritten Name]

OPD No: 30602

Date: 1-6-2021

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D.H.Q Hospital
Bannu

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ATTESTED

M.T.I DHQ Teaching Hospital Bannu

Out Patient Department

215302

Name: 2/5

OPD No: 28037

Date: 31-5-2021

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Director
D. H. Q. Hospital
Bannu

ATTESTED

M.T.I DHQ Teaching Hospital Bannu

Out Patient Department · 218701

13

Name: [Signature]

OPD No: 96012

Date: 3/5/90

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[Signature]

Tub. Carbuncle
[unclear]

Tub. Paronychia

Tub. Nephritis

[unclear] Bore

* Report sent for [unclear]

[Signature]

Medical Officer
M.T.I DHQ
Bannu

[Signature]
ATTESTED

M.T.I DHQ Teaching Hospital Bannu

24

Out-Patient Department

215301

Name: [Signature]

OPD No: 27151

Date: 13-4-21

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Medical Officer
D.M.Q. Hospital
Bannu

[Signature]
ATTESTED

M. T. DHO Teaching Hospital Bannu

Out Patient Department

213286

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Name:

OPD No:

Date:

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G. M. 1/10/21
A. 1/10/21 - 142

for 02 week

Medical Officer
D.H.O Hospital
Bannu

ATTESTED

جناب ہجرت سیکرٹری لیتھو KPK

16

Annex-C

حکمانہ ایسی

اصل خانہ جات

15938 حصہ IG

3/6/21

ضلع عالی! حکمانہ ایسی برخلاف حکم حوض

من سائل حکمہ اصل جات میں حوض 12/18/2004 برقی ہو کر اپنی ڈیوٹی نہایت خوش اسلوبی سے ادا کرتا رہا اور کبھی بھی افسران بالا کو شکایت کا موقع نہیں دیا۔

ضلع عالی! من سائل حوض 2/10/2021 کو بہت سخت بیمار ہو گیا میں وہ

MS ہسپتال ہیڈ کوارٹر ہسپتال میں 3 ہفتے ہیڈ ریسٹ دے دیا اور

بعد دوبارہ MS جات حوض 3/9/2021 کو ویک اپ کرنے کے بعد سر ہسپتال

دے دیا، جملہ دستاویزات لف میں۔ من سائل کی غیر حاضری قطعی قصداً نہ تھی

بلکہ وجوہات بالا تھی۔

ضلع عالی! من سائل نے ایسی جناب صاحب گزاروں کو بروئے حکم زیر ایسی

خارج کی گئی ہیں وہ اجنبات کو حکمانہ ایسی دائر میں۔ من سائل نہایت

غریب شخص ہے اور سارے خاندان کا واحد کفیل ہیں۔

ضلع عالی! حکم جناب صاحب خلاف قانون، خلاف ریکارڈ، جو

قابل منسوخی ہے، لالعدم قرار دیا جا کر سائل کو مدد زنت پر بحال کیا جا

من سائل Personal Hearing بھی کرنا چاہتا ہوں۔

سند الوجوہات بالا ایسی منظور فرما کر سائل کو مدد زنت پر بحال کیا

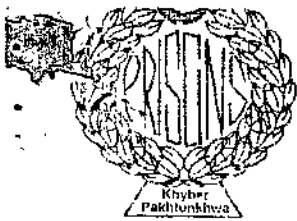
سائل تاحیات دعا گو رہے گا۔

سائل: سمیع اللہ ولد شہیر علی سابق وارڈر سٹریٹ عمل لیتا

حال چکڈاواں مندروری تیل شاہ ضلع بنوں

0333 9982942

ATTESTED



INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

91-9210334, 9210406

091-9213445

No.Estb/Ward-/Orders/ 27652 / -

Dated 27-08-2021 / -

(1.4)
Ammer

ORDER:

WHEREAS, Warder **Sami Ullah S/O Sher Ali** while attached to Interment Center Lakki Marwat for pay purpose and to Central Prison Peshawar for duty purpose was awarded the major penalty of "**Compulsory Retirement from Service**" and "the period of his absence w.e.f 30-03-2021 to 01-06-2021 treated as leave without pay" by the Superintendent Headquarters Prison D.I Khan vide his office order No. 2071 dated 03-06-2021 due to his willful absence for the period quoted above.

AND WHEREAS, the said warder preferred his departmental appeal for setting-aside the penalty awarded to him, which was examined in light of the available record of the case and it was observed that the charges leveled against the appellant were proved. Moreover, his past service record is also adverse and speak that he is habitual offender

AND WHEREAS, he was afforded an opportunity of personal hearing on 25-08-2021. During the course of hearing, he explained his position and his plea was found unjustified and unsatisfactory.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of powers conferred under Rule-17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 read with Rule-05 of Khyber Pakhtunkhwa Service Appeal Rules 1986, the decision of the competent authority is upheld and appeal of the appellant is hereby rejected being without any substance.

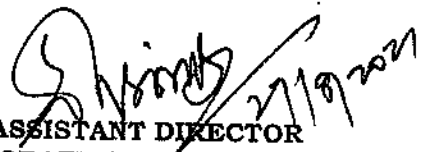
INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR.

Endst; No. 27653-57 / -

Copy of the above is forwarded to:-

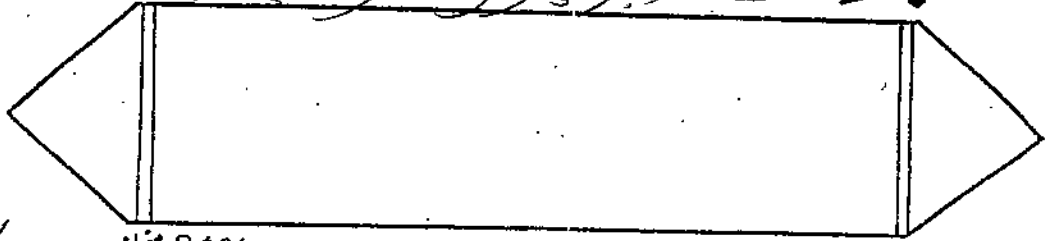
1. The Superintendent Headquarters Prison D.I Khan for information and necessary action with reference to his letter No. 3389/WE dated 02-08-2021.
2. Incharge Interment Center Lakki Marwat for information and necessary action. He is directed to inform the appellant accordingly and also make necessary entry in his Service Book under proper attestation.
3. Superintendent Central Prison Peshawar for information.
4. The District Accounts officer concerned for information and necessary action.
5. Appellant concerned C/O Incharge Interment Center Lakki Marwat for information.

ATTESTED


ASSISTANT DIRECTOR
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

27/8/2021

بعدالت حسب خبر جناب کورٹ سروس کے لئے



Petitioner

2021ء منجانب

سمیع اللہ بنام حکومت و غیرہ

موزخہ	-----
مقدمہ	-----
دعویٰ	-----
جرم	-----

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی وکل کاروائی متعلقہ
آن مقام کے لئے کے لئے کے لئے کے لئے

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 تقرراتالہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 بسورت ڈگری کرنے اجراء اور صولی چیک ور و سپیہ ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 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 بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

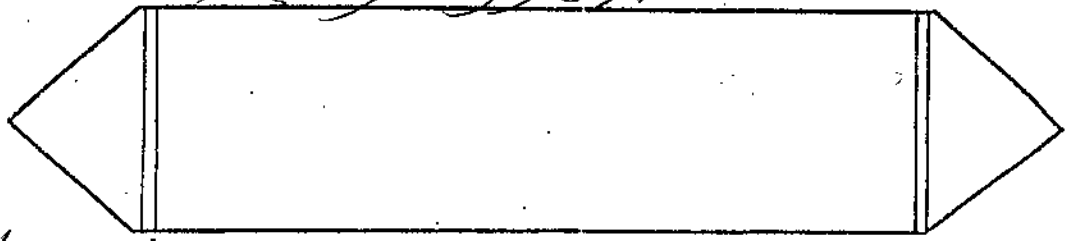
Accepted and
Accepted

المرقوم _____ ماہ _____ 2021ء

بمقام سروس ٹریبونل کے لئے منظور ہے۔

سمیع اللہ ولد منیر علی

بعدالت عبیر مختار محمد سرور سید شہناز



Particulars

2021، پنجاب

سمیع ارشد بنام صورت گفت و گو

موزخہ	---
مقدمہ	---
دعویٰ	---
جرم	---

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے لیے

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 ثالثہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانش التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ نہ ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی نہ کو کر کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

Accepted and Accepted

المرقوم _____ ماہ _____ 2021

السواہ العبد

بمقام سرور سید شہناز کے لئے منظور ہے۔

سمیع ارشد