

Appeal No. 780/16

Sher Ali vs Govt

06.10.2016

Appellant with counsel present. Preliminary arguments heard and record perused.

2. Brief facts of the case of the appellant are that he was serving as Constable in Police Force when subjected to enquiry on the allegations of willful absence and removed from service vide impugned order dated 15.10.2009 where-against the appellant preferred departmental appeal on 06.08.2011.

3. The appellant was to prefer service appeal within 30 days after lapse of prescribed period of 90 days meant for decision of departmental appeal but he preferred the instant service appeal on 20.07.2016 i.e. after about 4 years of the departmental appeal. The appellant has thus failed to prefer the service appeal within the time specified under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

4. No cogent reason is shown for delay and preferring the service appeal after lapse of about 4 years from the due date as such the appeal is dismissed in limine on the ground of limitation. File be consigned to the record room.


Chairman

Camp Court, Swat

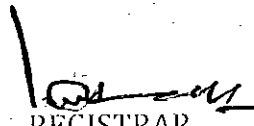



06.10.16.

ANNOUNCED

06.10.2016

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 780/2016


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01/08/2016	<p>The appeal of Mr. Sher Ali resubmitted today by Qazi Farid Ahmad Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on: <u>3.8.16</u></p> <p style="text-align: right;"> MEMBER</p>
	03.08.2016	<p>Counsel for the appellant present. The appeal pertains to the territorial jurisdiction of Malakand Division and as such to be heard at Camp Court Swat. To come up for preliminary hearing on <u>08-09-2016</u> before S.B at Camp Court Swat.</p> <p style="text-align: right;"> Member</p>
	08.09.2016	<p>Junior to counsel for the appellant present. Seeks adjournment. Adjourned preliminary hearing to 06.10.2016 before S.B at camp court, Swat.</p> <p style="text-align: right;"> Chairman Camp Court, Swat.</p>

The appeal of Mr. Sher Ali Ex-Constable No. 668 son of Amir Shahwas Khan Distt. Swat received to-day i.e. on 20.07.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copies charge sheet, statement of allegation, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal may be attested.
- 4- Annexures of the appeal may be flagged.
- 5- Copy of rejection order of first departmental appeal is not attached with the appeal may be placed on it.
- 6- Copy of second departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 4174 /S.T,

Dt. 21/7 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Qazi Faid Ahmad Adv. Pesh.

Note:

All the objections mentioned above are removed, at page 10 is the first order, appeal of Appellant was marked to Respondent NO 3. No charge sheet or enquiry is conducted.
~~Re~~ Re-submitted after compliance.



Hamza Amir Gulab
Advocate
dt: 01-08-2016.

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

Service Appeal No...780.../2016

Ex-Constable Sher Ali S/O Amir Shawas Khan R/O Village Dakorak Tehsil
Charbagh District Swat

.....Appellant

VERSUS


1. The Inspector General of Police Khyber Pakhtunkhwa at Peshawar
2. The Regional Police Officer (DIG) Malakand Range Saidu Sharif Swat
3. District Police Officer at Gulkada Swat

.....Respondents

S.#	Description of Documents	Annexure	Pages
1.	Memo of Appeal		1-4
2.	Addresses of Parties		5
3.	Affidavit		6
4.	Copy of Appointment Order	A	7-9
5.	Copy of Order dated 15.10.2009	B	10
6.	Copy of Departmental Appeal	C	11
7.	Copy of Order dated 21.06.2016	D	12
8.	Wakalatnama		13-14


Appellant

Through


Hamza Amir Gulab
Advocate

①

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 780 /2016

Ex- Constable Sher Ali No.668 S/O Amir Shawas khan

R/O Village Dakorak Tehsil Charbagh District Swat

Versus

Diary No. 720

Dated 20/7/2016

- 1- Inspector General of Police Khyber Pakhtunkhwa Peshawar.
- 2- Regional Police Officer (DIG), Malakand Range Saidu Sharif Swat.
- 3- District Police Officer, Swat at Gul Kada.

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 READ WITH SECTION 10 OF THE REMOVAL FROM SERVICE (SPECIAL POWER) ORDINANCE, 2000 AGAINST THE IMPUGNED ORDER OF REMOVAL FROM SERVICE DATED 15.10.2009 WHERE IN, HE REMOVED THE APPELLANT FROM HIS LEGAL SERVICE AND IMPUGNED ORDER OF THE RESPONDENT NO.1 DATED 21.06.2016 WHEREBY HE MODIFIED THE ORDER OF RESPONDENT NO.3 AND CONVERTED THE PUNISHMENT OF THE APPELLANT INTO COMPULSORY RETIREMENT ^{IN} LIEU OF REINSTATEMENT IN SERVICE WITH ALL BACK BENEFITS.

PRAYER

ON ACCEPTANCE OF THE INSTANT APPEAL, THIS HONOUABLE TRIBUNAL MAY GRACIOUSLY BE PLEASE TO SET ASIDE THE IMPUGNED ORDER OF THE RESPONDENT NO.1 AND ALSO SET ASIDE THE IMPUGNED ORDER OF THE RESPONDENT NO.3, DATED 15/10/2009 & THE APPELLANT MAY KINDLY BE REINSTATE IN SERVICE WITH ALL BACK BENEFITS.

Filed to-day

Registrar

20/7/16

Re-submitted to -day
and filed.

Registrar

1/8/16

RESPECTFULLY SHEWETH.

1. That appellant was recruited as constable in Police Force in the year 1993, vide order dated 05/5/1993 thus has got more than 16 years service at his credit. (Copy Annexure A)
2. That appellant remained absent due to unavoidable circumstances and life threats from militants and this is a real fact that the home village of the appellant Dakorak was the main centre of militants (Taliban). For the reason above and expected loss the appellant was shifted to Karachi alongwith his family to safeguard the lives.
3. That appellant has been proceeded against for the mentioned alleged absence without any information and without scrutinizing the alleged matter of absence and non absence and also without the scrutiny of place/station of appellant posting. The so called inquiry proceeding has been conducted at the back of the appellant and was met out with very harsh punishment of dismissal from service vide order dated 15.10.2009 of the respondent No.3. (Copy Annexure B)
4. That being aggrieved from (in-justice i.e removal from service the appellant preferred departmental appeal before the respondent No.2 who delayed the matter by one pretext or other and lastly he referred the departmental appeal of the appellant to the Appeal Board latter on the Appeal Board partially accepted the departmental appeal and modified the order of the respondent No.3 and converted the punishment of removal from service into compulsory retirement. Hence aggrieved the appellant from both the impugned orders, the appellant prefers the instant service appeal inter

3

alias on the following grounds. (all relevant record are attached as annexure- C & D

GROUNDS

- A. That the respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article, 4 of Constitution of the Islamic Republic of Pakistan, 1973. The appellant was very much present and active servant. This very settled truth has been ignored by the respondents and awarded him major penalty of dismissal from service, the same is not only against principal of nature justice fair play, equity but also unwarranted and undesirable. Therefore, this Tribunal has jurisdiction to interfere with and uphold the spirit of justice, fair play and equity and set aside both impugned orders.
- B. That it is pertinent to mention here that respondents has re-instated so many police personals who were dismissed from their services on account of absence during the period of militancy, but appellant has been treated differently.
- C. That the appellant was not personally served regarding the charge sheet and according to the available record no inquiry has been conducted. It is evident from the order of the respondent No.3 that the conclusion para that no need of holding departmental enquiry as the service of the appellant is less than three years and is under training. Although it is clear from the order of the respondent No.1 that the appellant have more than 16 years service and also a fully trained from the Police Training College Hangu vide notification No.8516-40 dated 10.9.1994.

Therefore the above mentioned impugned orders are liable to be set aside.

- D. That appellant has highly been discriminated as his colleague have been reinstated in their service with all back benefits and moreover, so many Police Personals were dismissed from their services on account of their absence during the crucial days of Taleban militancy. The same is/was the violation of Article 27 of the Constitution of Pakistan, 1973. On this score as well the impugned orders was nullity in the eyes of law and liable to be interfered with by this Honourable Tribunal by rescinding the same with a Judicial Order.
- E. That appellant has more than 16 years service at his credit, but has been treated very harshly, and differently and this aspect has highly been ignored.
- F. That appellant is under sever financial crises as he is jobless since the impugned Order, therefore, liable and deserves to be declared as entitled to back benefits.
- G. That appellant will like to seek the permission of this Honourable Tribunal to advance some more grounds at the time of hearing/arguments.

It is therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in circumstances of the case, not specifically asked for, may also be granted to the appellant.

Through

Appellant

Qazi Farid Ahmad
Advocate Swat.

(5)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHUTNKHWA PESHAWAR.

Service Appeal No. _____/2016

Ex- Constable Sher Ali S/O Amir Shawas Khan R/O Village
Dakorak Tehsil Charbagh District Swat.

(Appellant)

VERSUS

- 1) The Inspector General of Police Khyber Pakhtunkhwa
at Peshawar.
- 2) The Regional Police Officer (DIG) Malakand Range
Saidu Sharif Swat.
- 3) District Police Officer at Gulkada Swat.

(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT

Ex- Constable Sher Ali S/O Amir Shawas Khan R/O Village
Dakorak Tehsil Charbagh District Swat.

RESPONDENT

- 1) The Inspector General of Police Khyber Pakhtunkhwa
at Peshawar.
- 2) The Regional Police Officer (DIG) Malakand Range
Saidu Sharif Swat.
- 3) District Police Officer at Gulkada Swat.

Appellant

Through

(FA)

Qazi Farid Ahmad
Advocate Swat

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER
PAKHUTNKHWA PESHAWAR.

Service Appeal No. _____/2016

Ex- Constable Sher Ali S/O Amir Shawas Khan R/O Village
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VERSUS

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at Peshawar.
- 2) The Regional Police Officer (DIG) Malakand Range
Saidu Sharif Swat.
- 3) District Police Officer at Gulkada Swat.

(Respondents)

AFFIDAVIT

I, Ex- Constable Sher Ali S/O Amir Shawas Khan
R/O Village Dakorak Tehsil Charbagh District Swat do hereby
solemnly affirm and declare on oath that the contents of the
titled appeal as well as application are true and correct to the
best of my knowledge and believe that nothing has been kept
back or concealed from this honourable Tribunal.


DEPONENT

ATTESTED



Annexure A

①

در خصوص این - در خصوص این - در خصوص این

OHC

Receipt pending

عنوان: درخواست اعطای مجوز بومی سازی

①

صاحبان!

تذکره حضور عالیجنابان در خصوص این پرونده است که در تاریخ 31/3/93 در خصوص این پرونده است که در تاریخ 31/3/93

ع.ح
محمد علی...

که به روزنامه -

تذکره بابت درج نام این پرونده در روزنامه است که در تاریخ 31/3/93

اینجا هم بابت درج نام این پرونده در روزنامه است که در تاریخ 31/3/93

تذکره بابت درج نام این پرونده در روزنامه است که در تاریخ 31/3/93

① - شهرک خان

② - امیر شهبان خان

③ - دریاچه نیشابور - 28 خرداد 1374

④ - شهرک ایسی

⑤ - کاروانسرای محمدعلی شاه قاجار - 1374

5-107-2

33X35-68-2

29/3/93 - در خصوص این

Mulla

31/3/93

(8)

1- زوالفقار والہ زلمی صاحب
DSP

بے دو دیگر سابقوں کے

o/c

his measurement

5 - 10 1/2

33 x 35

NAELI 8112/3113

Signature

CIC
Signature

Signature

ENLISTMENT ORDER.

Mr. Sher Ali Khan s/o Amir Shadiaz Khan Consto Afghan
Village Dakorak Charbagh Police Station K. Khela
District Swat

is hereby enlisted as constable in this
district police in three (3) years probation period with effect from
5-5-93 and a/c.

Constabulary NO. 668

Height 5 - 10 1/2

Weight 33 x 35

Educ: 10th

OS NO. 89

Dated 5-5-93

Superintendent of Police Swat.

Signature

9
POLICE TRAINING COLLEGE HANGU



ESTB - 1935

Certificate of Proficiency

has been awarded to

Sher Ali 668 of Swat

for having successfully completed the prescribed 1 month

TEAR GAS TACTICAL & HANDLING COURSE

for the term ending

31st January, 2002.

Dated 08/2/2002

OB No. 91


Commandant
PTC HANGU, NWFP.

Annex B

(10)

(668)

CTC
July 11/09

ORDER

Whereas you, Constable Sher Ali No. 668
was deputed for duty at PS kabal

As reported by MHC Police Station Kabal vide D.D No. 12 Dated. 03/08/2008, You Constable Sher Ali No. 668 while posted to Police Station Kabal, absented yourself from duty till to dated.

The enquiry conducted against him has revealed that he has proceed abroad in there is no hope of his return.

You were informed and directed to assume your duty immediately and report to your place of duty but you deliberately did not respond back and remained absent. Again proper information for rejoining the duty was conveyed to you on 28/8/2009 by the Head Clerk but no reply was received from you. This constitutes misconduct on your part and as such you are liable to action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

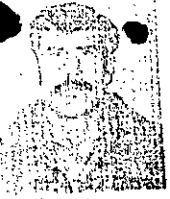
I have come to the conclusion that either the accused Police Officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during war with the Militants in Swat District.

I, being competent authority, therefore, satisfied to proceed under Section 5 of sub section (4) of the Removal from Service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001 and dispense with the enquiry proceedings as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry as his service is less than three years and is under training. Since the accused Police Officer Constable Sher Ali No. 668 has been found guilty of gross misconduct as defined in the said ordinance, I Qazi Ghulam Farooq District Police Officer, Swat as competent authority, impose major penalty by removing him from service with immediate effect.


District Police Officer, Swat

O.B. No. 149

Dated. 15.10.09.

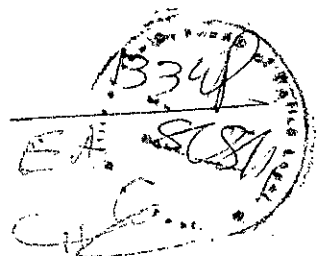


حکومت پاکستان
قلمی کارڈ
15602-7 69-3-7



Annex C (11)

حضرت صاحب DIG



آپیل منجانب

6/8/11
6482

جناب عالی - آپیل حسب ذیل عرض ہے -

1- یہ کہ بحوالہ O.B.No 149 حرره مورخہ 15/10/2009 من سائل کو جناب ہ

سورت نے ڈسمنس کیا ہے -

یہ کہ من سائل موضع دکوڑکی سورت کار معاشی ہوں۔ مذکورہ مو
دھشت گردوں کا گڑھ تھا۔ کئی مرتبہ مجھے وہمکیاں ملی تھیں،

11/8/11
De/DS/Hajrat
Khan
for all actions
4/11/11

اور میرے بال بچ کو بھی خطرہ لاحق تھا۔ لہذا میں نے نقل مکان
کر کے کراچی میں رہنا پیش آختیار کیا۔ اور بال بچ کو کراچی ہی

2/10/11
06/8/11

2- یہ کہ اب مجھے معلوم ہوا کہ خطرناک ٹرانڈر فضل رحمان ولد عظیم سید
دکوڑکی حالیہ دنوں میں بقضائے الہی مرہکا ہے۔ لہذا میں وہ

بال بچ واپس صلح سورت موضع دکوڑکی آئیجا۔

3- یہ کہ معلوم ہوا کہ مجھے سروس سے کنسٹنٹ کیا گیا ہوں۔ میں سال
کو بھرتی ہوا ہوں۔ ٹرین شدہ پولیس ہوں۔ مکہ و قوم کا خدمت

بہ طریقہ احسن کر سکتا ہوں۔ مزید یہ کہ دیگر سپاہی بھی آپ ماہ
نے دوبارہ سروس پر بحال کئے گئے ہیں۔

16/8/11
dt 6/8/11

استدعا ہے۔ کہ منظور کیا آپیل عذا من سائل دوبارہ
سروس پر بحال کرنا کا حکم صادر کیا جا کر جناب DPP صاحب

DDosuit
for courts
along with record
and departmental
enquiry file

کا حکم برداشتگی ناف شدہ منسوخ کیا جائے۔ دیگر دادرسی فر
مرعت کرنا ہے۔ 10/10/11



12

Annex-D

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

No. S/ 4545 /16, dated Peshawar the 21-06 /2016.

ORDER

CIC
J. J. J.


This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Ex-Constable Sher Ali No. 668**. The appellant was removed from service by DPO/Swat vide OB No. 149, dated 15.10.2009, on the charge of absence from duty for 01 year, 02 months and 12 days.

His appeal was filed by RPO/Malakand vide letter No. 5159/E, dated 07.09.2011.

Meeting of Appeal Board was held on 26.05.2016 wherein appellant was heard in person. During appearance Petitioner contended that he is a patient of HCV.

Keeping in view his long service of 16 years and 05 months, the Board converted his punishment of removal from service into compulsory retirement.

This order is issued with the approval by the Competent Authority.

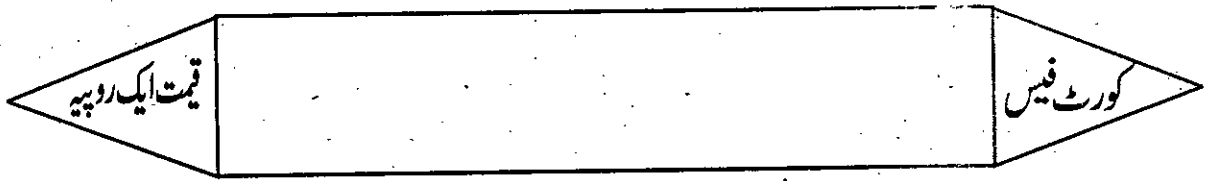

(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 4546-52 /16,

Copy of the above is forwarded to the:

1. Regional Police Officer, Malakand Region, Swat.
2. District Police Officer, Swat.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registry, CPO.

بعدالت جناب سروس ٹریڈینوئل کے پی کے لسٹاور



مورخہ 15 ماہ جولائی 2017ء منجانب انسٹانٹ -
مقدمہ ایکس کنسٹبل سید علی بنام انسٹانٹ پولیس و عدلیہ
دعویٰ سروس لیسٹ -
جرم
باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام لسٹاور کے لئے قاضی فرید احمد ایڈووکیٹ 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 و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 15 ماہ جولائی

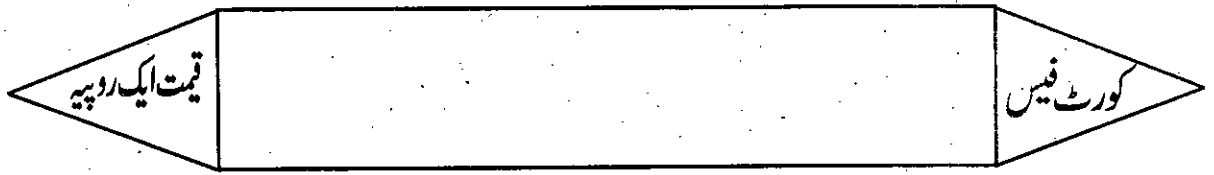
Accepted
بمقام
لسٹاور

by
Qazi Farid Ahmad
Advocate کے لئے منظور ہے

بمقام

لسٹاور

بعدالت سروس ٹریبونل فیصلہ محتوایاً و شاور



مورخہ 20/07/2016 سنہ ۲۰۱۶ء منجانب
 مقدمہ شہری بنام انسپکٹر جنرل کھلی کے وغیرہ
 دعویٰ سروس ایبل
 جرم باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام بسااور کے لئے حتمہ امر کلاب ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند ہے

المرقوم 20/07/2016 ماہ جولائی ۲۰۱۶

العبد گدگ واہ شاندہ العبد

Attested & Accepted

Amir Gulsar Advocate کے لئے منظور ہے

بمقام شاور