

Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 840/2023

S.No

Date of order proceedings

Order or other proceedings with signature of judge

1

2

3

1

21.11.2023

The implementation petition of Mr. Mamoor Khan submitted today by Mr. Mansoor Salam Advocate It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parcha peshi is given to counsel for the petitioner.

By the order of Chairman


REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 840 /2023

In

Service Appeal No.1259/2023

Mamoor Khan

V/S

Government of KPK& Others

I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	1-2
2.	Copy of Judgment dated 24.08.2023	-A-	3-6
3.	Copy Appeal dated 18.09.2023	-B-	7
4.	Vakalat Nama	-----	

APPELLANT

Through


(MANSOOR SALAM)
ADVOCATE, PESHAWAR

MANSOOR SALAM
Advocate High Court
PESHAWAR
0333-9730452

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 840 /2023

In

Service Appeal No.1259/2023

9283
21/11/23

Mamoor Khan Ex-Sepoy, Village & Post Office GhazniKhel, District Lakki Marwat. **PETITIONER**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KPK, Civil Secretariat, Peshawar.
2. The Secretary Home & Tribal Affairs Department Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Provincial Police Officer of Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Commissioner District Lakki Marwat.
5. The District Police Officer, District Lakki Marwat.

RESPONDENTS

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT OF
THIS HON'BLE TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SUBMITTED:

1. That the applicant/appellant filed Service Appeal No.1259/2013 in this august Tribunal against the impugned Notification order dated 22.03.2021 & 21.10.2021, whereby the appellant has been upon the insertion of new Section-11 in the Act-2021 declared "as never ever retired from service & reinstated as regular employee of the instant department" vide dated 24.08.2023. **(Copies of Judgment/Order are attached as Annexure-A).**
2. That the said appeal was decided/dispose of along-with others connected appeals on 24.08.2023 wherein the impugned notification dated 22.03.2021 were set aside with the direction to the competent authority that the appellant be reinstated according to the newly inserted Section-11 in Act-2021. In view of the afore-stated situations, the services of the appellants restored & appellant has been reinstated.
3. That the respondents were totally failed in taking any action and remained mum on that issue till 05 October, 2023 and for that reason appellant also filed an Appeal vide Dairy No. 1552 for implementation of Judgment dated 24.08.2023 in letter & spirit on dated 18.09.2023 before the respondent No.04. **(Copy of the Appeal dated 18.09.2023 is Annexure-B)**

4. That it is worth to mention here that the judgment of August Tribunal dated 24.08.2023 has attained the finality as the Law Department has declared the case an un-fit for filing CPLA in the Hon'ble Supreme Court of Pakistan and the respondents have failed in taking any action against the applicant/appellant, therefore, the applicant/appellant is entitled to be re-instated from the date of impugned notification dated 22.03.2021 with all back benefits.
5. That despite the filing appeal dated 18.09.2023 respondents are not willing to obey the Judgment of this Tribunal and to save themselves, they are bent upon to proceed against the appellant again even after the Judgment.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment of this august Tribunal in letter and spirit and reinstate the appellant w.e.f. the date i.e. 22.03.2021 with back benefits and not taking proceedings on the other/any pretext.

Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

معمور خان
APPLICANT/APELLANT
(Mamoor Khan)

Through :

Mansoor Salam
(MANSOOR SALAM)
ADVOCATE, PESHAWAR

(2-A)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. _____/2023
In
Service Appeal No.1259/2023

Mamoor Khan

V/S

Government of KPK& Others.

AFFIDAVIT

I, Mamoor Khan Ex-Sepoy, Village & Post Office Ghazni Khel, District Lakki Marwat, do hereby affirm and declare that the contents of this Service Appeal are true and correct to the best of my knowledge & belief and nothing has been withheld from this Hon'ble Tribunal.

محمور خان

DEPONENT
(APPELLANT)

CNIC: 11201-3705040-3

CELL: 0345-1953474

Mansoor Salam

IDENTIFIED BY:

Mansoor Salam

Advocate High Court

MANSOOR SALAM
Advocate High Court
PESHAWAR
0333-9730452



Dine

21/11/23.

Service Appeal No.1916/2022 titled "Muhammad Salim Vs. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat at Peshawar and others"



ORDER

24th Aug. 2023

Kalim Arshad Khan, Chairman:

Through this single order this appeal and all the following connected appeals are being decided as all are against the same impugned Notifications No.SC,Police-II)HD/MKD/Levies/Misc./2020 dated 22.03.2021 and No.SC(Police-II)HD/1-3/FEDERAL LEVIES 2021 dated 20. 10.2021. Appeal Nos:1916/2022, 1917/2022, 1918/2022, 1919/2022, 1920/2022, 1921/2022, 1922/2022, 1923/2022, 1924/2022, 1925/2022, 1926/2022, 1927/2022, 1928/2022, 1929/2022, 1930/2022, 1931/2022, 1932/2022, 1933/2022, 1934/2022, 1935/2022, 1936/2022, 1937/2022, 1938/2022, 1939/2022, 1940/2022, 1941/2022, 1942/2022, 1943/2022, 1944/2022, 1945/2022, 1946/2022, 1947/2022, 1948/2022, 1949/2022, 1950/2022, 1951/2022, 1952/2022, 1953/2022, 1954/2022, 1955/2022, 1956/2022, 1957/2022, 1958/2022, 1959/2022, 1960/2022, 1961/2022, 1962/2022, 1963/2022, 1964/2022, 1965/2022, 1966/2022, 1967/2022, 1968/2022, 1969/2022, 1970/2022, 1971/2022, 1972/2022, 1973/2022, 1974/2022, 1975/2022, 1976/2022, 1977/2022, 1978/2022, 1979/2022, 1980/2022, 1981/2022, 1982/2022, 1983/2022, 1984/2022, 1985/2022, 1986/2022, 1987/2022, 1988/2022, 1989/2022, 1990/2022, 1991/2022, 1992/2022, 1993/2022, 1994/2022, 1995/2022, 1996/2022, 1997/2022, 1998/2022, 1999/2022, 2000/2022, 2001/2022, 2002/2022, 2003/2022, 2004/2022, 34/2023, 35/2023, 36/2023, 37/2023, 38/2023, 39/2023, 40/2023, 41/2023, 42/2023, 43/2023, 44/2023, 45/2023, 46/2023, 47/2023,

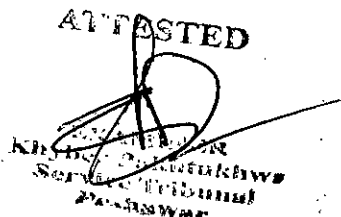
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

48/2023, 49/2023, 50/2023, 51/2023, 52/2023, 53/2023, 54/2023,
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 682/2023, 793/2023, 870/2023, 1175/2023, 1258/2023, 1259/2023,
 1288/2023, 1289/2023, 1300/2023, 1372/2023 and Service Appeal No.
 1538/2023,

2. In some of the appeals learned counsel for the appellants are present while some appellants are in person present. Mr. Muhammad Jan, District Attorney alongwith M/S Liaqat Ali DSP, Hakira Zada

[Handwritten signature]
 29/08/23

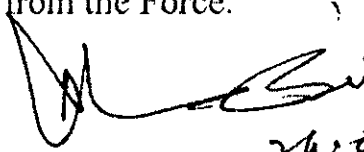
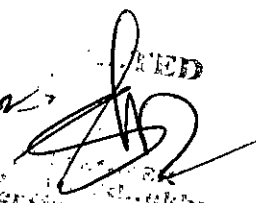
ATTESTED

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Superintendent, Muhammad Asim Khan Assistant, Parveez Khan Assistant and Sharif Ullah Assistant for respondents present.

3. It is noted with serious concern that nobody from the Home Department put appearance. Copy of this order be thus sent to the Worthy Chief Secretary Khyber Pakhtunkhwa and Worthy Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa for information.


4. The matter was heard on more than one dates and could not be decided because of pendency of a CP No.818/2023 before the august Supreme Court of Pakistan. During the course of arguments on some previous dates, Dr. Adnan Khan learned counsel for some of the appellants had informed the Tribunal that the petitioners, who had approached the august Supreme Court of Pakistan, against the judgment of Hon'ble Peshawar High Court, in Writ Petition No.363-M of 2021 dated 29.11.2022, had submitted application for withdrawal of the CP from the august Supreme Court of Pakistan. The august Supreme Court was pleased to dismiss the CP as withdrawn on 07.06.2023. Today, Mr. Taimur Haider, Advocate/counsel for the appellant in Service Appeal No. 162/2023, produced copy of an Act of the Provincial Assembly named "The Provincially Administered Tribal Areas Levies Force (Amendment) Act, 2021" in to which a new section, Section-11 was added, which is reproduced as under:

"11. Reinstatement of the levies personnel. --- All levies personnel, who have been retired from the Force, with effect from 22.03.2021, till the commencement of the Provincially Administered Tribal Areas Levies Force (Amendment) Act 2021 shall be reinstated in the Force as regular employees, with effect from their respective dates of retirement and they shall be deemed as never retired from the Force."


24.08.2023

Tribunal
Khyber Pakhtunkhwa
Service Tribunal

When confronted with the provisions of the newly added Section-11 of the Act of 2021, whereby, all Levies personnel, who had retired from the Force w.e.f 22.03.2021 till the commencement of the Act i.e. 30.11.2021, were reinstated as regular employees w.e.f respective dates of retirement and were deemed to have never retired from the Force, the learned counsel was very fair to say that there was nothing more to be resolved by this Tribunal in these appeals, so is the agreement of other learned counsel as well as appellants present before the Tribunal, because by promulgation of the above Act especially insertion of new Section-11, whereafter, both the impugned Notifications no more remained effective. They, however, contend that even the provisions of the Act were not be complied with/implemented by the respondents. They say they would approach the proper forum for giving effect to/implementation of the provisions of Section-11 of the Act of 2021 and in case their grievances are not addressed in accordance with the terms of the Act, they would recourse to further legal remedies available to them. Disposed of in the above terms. (Copies of this order be placed in all connected appeals) Consign.

5. *Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 24th day of August, 2023.*


(Salah-Ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Muzam Shah

Certified to be true copy

Page 4

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation: 20/11/23
 Number of Writs: 4-P
 Copying No.: 20/-
 Urgent: 5/-
 Total: 25/-
 Name of Copy: _____
 Date of Copy: 20/11/23
 Date of Copy: 20/11/23

Ram/CA

The Deputy Commissioner
District Lakki Marwat
Khyber Pakhtunkhwa.

DC, LM

APPEAL FOR IMPLEMENTING IN LETTER & SPIRIT THE JUDGEMENT DATED 24.08.2023 OF SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR, BY WHICH THE APPELLANT HAS BEEN REINSTATED ON REGULAR BASIS W.E.F 22.03.2021 AND DECLARED THE NOTIFICATION DATED 22.03.2021 OF THE HOME SECRETARY KPK & OFFICE ORDER THEREUNDER DATED 19.04.2021 OF COMMISSIONER LAKKI MARWAT INEFFECTIVE UPON THE RIGHTS OF THE APPELLANT & WHERE THE APPELLANT HAS NEVER DEEM TO BE RETIRED FROM SERVICE.

1553
78-09-2023

Respected Sir,

With high reverence, utmost obeisance, and due deference, the Appellant very humbly solicits the instant Departmental Appeal to your good-self office, to the following effect;

1. That the Appellant belongs from respectable family, and appointed as 'Sepoy' in FR Bettani Levies (Now District Lakki Marwat) since the date of appointment till 19.04.2021, he was performing his duties with great zeal and devotion.
2. That the service of the appellant was protected/governed under PATA Levies Force Regulation 2012 & PATA Federal Levies Force Service (Amended) Rules 2013. As per Rule 17 of the ibid rules read with schedule III, retiring age of Levies force personals was given as sixty years.
3. Those after merger of FATA & Sub-Divisions with province of Khyber Pakhtunkhwa through 25th constitutional amendments vide dated 31.05.2018 which leads Article 247 omitted and Article 246 amended, resultantly Levies Force were absorbed with the provincial police through legislation as well. However in enactment it has been mentioned their services will be governed under Rules 2013 unless & until they are absorbed into KP Police. (25th Constitutional Amendment Annexed).
4. That those Levies personals i.e. FATA & FRs whose services were absorbed/merged in provincial police, their services are governed/protected under police rules and others enactments of civil servants including salaries pension rules etc.
5. That all of a sudden Secretary Home & Tribal Affairs issued impugned Notification dated 21.03.2021 vide which retiring age of the Sepoy of Levies force was reduced from sixty years (60 Yrs) to forty two years (42 Yrs) and in light of said impugned notification Deputy Commissioner Lakki Marwat circulated impugned office order dated 19.04.2021 by which appellant was thereunder declared retired from service w.e.f. 22.03.2021 on the basis of attaining age of forty two years (42 Yrs), more so Secretary Home & Tribal Affairs issued another impugned Notification dated 21.10.2021 vide which

G. J. Khan
ATTESTED

Better Copy

To,

The Deputy Commissioner
District Lakki Marwat
Khyber Pakhtunkhwa.

MODE: THROUGH PROPER CHANNEL

APPEAL FOR IMPLEMENTING IN LETTER & SPIRIT THE JUDGEMENT DATED 24.08.2023 OF SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR, BY WHICH THE APPELLANT HAS BEEN REINSTATED ON REGULAR BASIS W.E.F 22.03.2021 AND DECLARED THE NOTIFICATION DATED 22.03.2021 OF THE HOME SECRETARY KPK & OFFICE ORDER THEREUNDER DATED 19.04.2021 OF COMMISSIONER LAKKI MARWAT INEFFECTIVE UPON THE RIGHTS OF THE APPELLANT & WHERE THE APPELLANT HAS NEVER DEEM TO BE RETIRED FROM SERVICE.

Respected Sir,

With high reverence, utmost obeisance, and due deference, the Appellant very humbly solicits the instant Departmental Appeal to your good-self office, to the following effect;

1. That the Appellant belongs from respectable family, and appointed as 'Sepoy' in FR Bettani Levies (Now District Lakki Marwat) since the date of appointment till 19.04.2021, he was performing his duties with great zeal and devotion.
2. That the service of the appellant was protected/governed under PATA Levies Force Regulation 2012 & PATA Federal Levies Force Service (Amended) Rules 2013. As per Rule 17 of the ibid rules read with schedule III, retiring age of Levies force personals was given as sixty years.
3. Those after merger of FATA & Sub-Divisions with province of Khyber Pakhtunkhwa through 25th constitutional amendments vide dated 31.05.2018 which leads Article 247 omitted and Article 246 amended, resultantly Levies Force were absorbed with the provincial police through legislation as well. However in enactment it has been mentioned their services will be governed under Rules 2013 unless & until they are absorbed into KP Police. (25th Constitutional Amendment Annexed).
4. That those Levies personals i.e. FATA & FRs whose services were absorbed/merged in provincial police, there services are governed/protected under police rules and others enactments of civil servants including salaries, pension rules etc.
5. That all of a sudden Secretary Home & Tribal Affairs issued impugned Notification dated 21.03.2021 vide which retiring age of the Sepoy of Levies force was reduced from sixty years (60 Yrs) to forty two years (42 Yrs) and in light of said impugned notification Deputy Commissioner Lakki Marwat circulated impugned office order dated 19.04.2021 by which appellant was thereunder declared retired from service w.e.f. 22.03.2021 on the basis of

ATTESTED 

attaining age of forty two years (42 Yrs), more so Secretary Home & Tribal Affairs issued another impugned Notification dated 21.10.2021 vide which retirement age for Sepoy was determined as forty five years (45 Yrs), however appellant's contention/grievances was intact as it was. (Impugned Notification dated 22.03.2021 & office Order dated 19.04.2021 and Notification dated 21.10.2021 are Annexed).

6. That it is pertinent to mention here that when Article 247 of the Constitution was omitted then Regulation 2012 also stands abolished and possessed no legal sanctity at all, hence the impugned notifications & order which are issued under the said regulations has no legal status in the eyes of law.
7. That keeping in view the supra-mentioned episode, the grievances, that comes into existence, the Appellant approaches to knock the door & invoke the writ jurisdiction of Peshawar High Court under Article 199 of Islamic Republic of Pakistan, where Peshawar High Court in their detail judgment, awarded by three members larger bench, declared the appellant as **Civil Servant** and stated that appellant be approached to proper forum i.e. KP Service Tribunal & be treated under Civil Servant Act 1973. (Judgment of High Court dated 29.11.2022 is Annexed)
8. That the appellant after fulfilling all formalities approaches KP Service Tribunal & filed Service Appeal No. 1258/2023 for redressal of their grievances where the KP Service Tribunal awarded judgment dated 24.08.2023 & disposed of the appeal under Newly inserted Sec-11 of PATA Levies Force (Amendment) Act-2021 upon the following grounds inter-alia;

GROUND:

- A. That after 25th constitutional amendment neither Home & Tribal Affairs Department nor Deputy Commissioner LakkiMarwat have authority to issue the impugned notifications dated 22.03.2021, 21.10.2021 and office order dated 19.04.2021, indeed the impugned notifications & order are beyond the authority & its makers.
- B. That the actions & inaction of the competent authority proclaim their own mala-fide and discrimination meted out the appellant, where the competent authority did not treated the appellant and all employees of levies force according to law and rules and declared their age of retirement as 42 & 45 years, and appellant has been treated unlawfully, unconstitutionally, without lawful authority and liable to be treated alike other employees.
- C. That while retiring the appellant pre-superannuation is illegal and against the Civil Servants Pension Rules 1963 & also against the fundamental rights of the appellant as guaranteed by the constitution of Pakistan.
- D. That laws of the civil servants on the subject matter is very much clear from its very face that age of superannuation extended to 60 years vide Khyber Pakhtunkhwa Civil Servants (Second) ordinance 1977 w.e.f. 22.11.1976 and against the Civil Servants (Amendments) ordinance 2021 where it says that civil servant shall retire from service on the completion of 60 years of age.
- E. That it is a settled principal of law, that where a law requires a thing to be done in a particular manner, the same is to be done in that manner and not otherwise.
- F. That the appellant has not been treated in accordance with Article 25 of the Constitution 1973. Similarly impugned notifications regarding changing retiring age and office order dated 19.04.2021 squarely falls in the domain of discriminatory treatment, as other civil servants specially police personnel's



would be retired at the age of 60 years, however appellant has been retired from service at the age of 42 vide office order dated 19.04.2021 under the light of notification dated 22.03 2021.

- G.** That the law and courts of the country have always encouraged and preferred that rules are to be followed and have deplored, discoursed and depreciated any violation or variation therein.
- H.** That it has been settled by the Apex court as well as superior courts that every law governing terms and conditions of civil servants is to be applied prospectively and not retrospectively.
- I.** That the KP Provincial Assembly has circulated Gazette Notification in shape of an Act i.e. PATA Levies Force (Amendment) Act 2021 (known as Act-2021) dated 30.11.2021 wherein a new Section of has been inserted i.e. Section-11 which says "*Re-instatement of the Levies Personnel.---All levies personnel who have been retired from force, w.e.f 22.03.2021 till the commencement of Act-2021 shall be reinstated in the force as regular employees, w.e.f their respective date of retirement and they shall be deemed as never retired from force*".
- J.** That after merger of FATA and Sub-Division Bettani (FR-Bettani) into the province via 25th Amendment and after passing of law regarding absorption of levies force into police, neither the regulation nor rules made thereunder is applicable and neither department has any authority to issue any notification or office orders under the said rules and regulation.
- K.** That from all prospective, the impugned order is wrong and void and is liable to be modified and rectified and the appellant being a civil servant has to be treated according to services, more so the inaction of the competent authority is based on mala-fide, on ulterior motives, and against the norms & natural justice.
- L.** That it has been held in number of judgments that no legislation can be made which is detrimental to the terms and conditions of service of civil servants at the time of their initial appointment. More so the appellant services were protected before merger under regulations of 2012 read with rules of 2013 in which retiring age was fixed as 60 years, so through said notification it cannot be reduced.

It is therefore most humbly prayed that on acceptance of the instant Appeal the Appellant may kindly be reinstated in the light of Judgment dated 24.08.2023 of KhyberPakhtunkhwa Service Tribunal and according to Sec-11 of Act 2021 with all back & consequential benefits.

Note: The Appellant also implores and beseeches for personal hearing as well.

Date: 06.09.2023

معمور خان بھٹانی

Ex-Sepoy
Mamoor Khan S/o SherBahadur
GhazniKhel, LakkiMarwat
CNIC: 11201-3705040-3

ATTESTED

بعدالت

سروس ٹریبونل کے پی کے پشاور

تاریخ 21-11-2023

مقدمہ
دعویٰ
جرم

2023
سیدتیہ منجانب ایسیبلانٹ

محمود خان بنام گورنمنٹ آف پاکستان وغیرہ

باعث تحریر التلم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی درج ذیل وہی وکیل کارروائی متعلقہ آن مقام پشاور کے لئے منظور شدہ ایڈووکیٹ عالی کورٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے باہمی باہم و تقررات و فیصلہ برخلاف دیئے جواب دی اذرا قبال دعویٰ اور بصورت دیگر ہی کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست جرم کی تصدیق نہ رہا پس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا دیگر کی تکفیر یا اپیل کی برآمدگی اور منسوخی نیز واکر کرنے اپیل ٹکرائی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی جگہ تفویض اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پداختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ اتوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز تقابلاً و خرچہ کی بھولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاویخ پیشی مقام دورہ پر ہو یا بعد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا ذاکات نامہ لکھ دیا کہ سند رہے۔

2023

21

نومبر

21

المترجم

دکراشد

محمود خان بہتم خود
محمود خان ولد بشیر بسا در کمنہ ماؤن غازی ضلع جہلم ملکی رور

Accepted

& Attested

Galam

پشاور

بقام

کے لئے منظور ہے۔