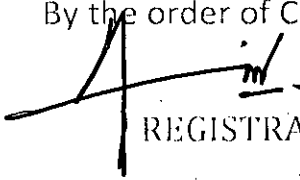


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 62/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.01.2024	<p>The implementation petition of Mr. Muhammad Rafique Khan submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____.</p> <p>Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

E. P. No. 62/2024

Misc Pett: No. \_\_\_\_\_ /2024

IN

S.A. No. 7059/2021

Muhammad Rafique Khan

versus

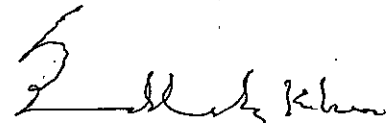
CCPO & Others

**I N D E X**

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 15-07-2021	"A"	4-7
3.	Copy of Judgment dated 10-10-2023	"B"	8-12
4.	Compliance letter dated 29-11-2023	"C"	13

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 10-01-2024

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

E.P. No. 62/2024

Misc Pett: No. \_\_\_\_\_ /2024

IN

S.A. No. 7059/2021

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 10503

Dated 11-1-2024

Muhammad Rafique Khan,

Sub-Inspector, No. 772/P,

Capital City Police, Peshawar. . . . . Appellant

**VERSUS**1. Capital City Police Officer,  
Peshawar.2. Provincial Police Officer,  
KP, Peshawar . . . . . Respondents**APPLICATION FOR IMPLEMENTATION OF THE  
JUDGMENT DATED 10-10-2023 OF THE HON'BLE  
TRIBUNAL, PESHAWAR:****Respectfully Sheweth:**

1. That 15-07-2021, applicant filed Service Appeal before this hon'ble Tribunal to shown him as confirmed Sub-Inspector from the date of promotion to the rank of Officiating Sub Inspector i.e. 16-04-2014 and further to bring his name on list "F" with effect from 16-04-2014 with al service benefits. (Copy as annex "A")
2. That the said appeal came up for hearing on 10-10-2023 and then the hon'ble Tribunal was pleased to hold that:-

"We are inclined to accept the present appeal with directions to the respondents to confirm the appellant as Sub-Inspector from the date when his other colleagues were confirmed, as well as place him in due place in the

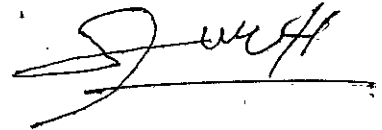
seniority list. The appellants are also entitled to all consequential benefits, if any". (Copy as annex "B")

3. That on 29-11-2023, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so far no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 10-10-2023 of the hon'ble Tribunal be complied with hence forthwith.

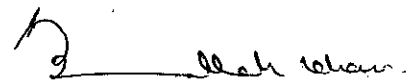
**OR**

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.

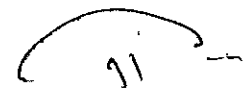


Applicant

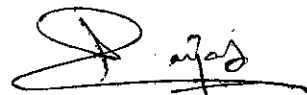
Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal

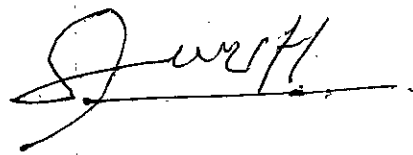


Amjad Nawaz  
Advocates

Dated: 10-01-2024

**AFFIDAVIT**

I, Muhammad Rafique Khan, Sub-Inspector Capital City Police Officer Peshawar (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.

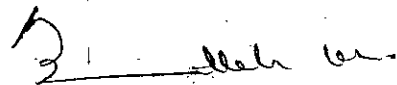


DEPONENT



**CERTIFICATE:**

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.



ADVOCATE

A 4



**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 7059 / 2021

Muhammad Rafique Khan,  
Offg: Sub-Inspector No. 772/P  
Capital City Police,  
Peshawar ..... Appellant

**Versus**

- 1. Capital City Police Officer,  
Peshawar.
- 2. Provincial Police Officer,  
KP, Peshawar ..... Respondents

◊<=>◊<=>◊<=>◊<=>◊

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974  
AGAINST OFFICE NOTIFICATION NO. 3439 / EC-I,  
DATED 16-03-2021 OF R. NO. 01, WHEREIN THE  
INCUMBENTS MENTIONED THEREIN WERE  
CONFIRMED IN THE RANK OF SUB INSPECTORS  
FROM THE DATE OF COMPLETION OF  
MANDATORY PERIODS BUT APPELLANT BEING  
AT PAR AS PER NOTIFICATION DATED 26-02-  
2021 WAS IGNORED FROM THE SAID BENEFITS  
FOR NO LEGAL REASON:**

◊<=>◊<=>◊<=>◊<=>◊

**Respectfully Sheweth:**

- 1. That appellant was initially appointed / recruited as Probationer Assistant Sub-Inspector on 17-09-2010.
- 2. That on 13-08-2014, services of appellant was regularized along with others but with immediate effect instead of from the date of initial appointment i.e. 17-09-2010 and was deprived for about 03 years from the benefits of rendered services. (Copy as annex "A")

*(Signature)*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*(Signature)*

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3. That colleagues of appellant filed W.P. No. 3720-P/18, "Qazi Muhammad Arif etc vs Govt. of KP & Others" to direct respondents to implement the decision of the Committee Board regarding fixation of seniority from the date of initial appointment which was allowed on 24-04-2019 by the hon'ble bench of the Peshawar High Court, Peshawar directing respondents to implement the recommendations of the Committee already admitted by the them in the comments in letter and spirit. (Copies as annex "B" & "C")
4. That in the pursuance of the judgment dated 24-04-2019 of the hon'ble Peshawar High Court, Peshawar, R. No. 01 revised List "E" of the colleagues of appellant etc from the date of initial recruitment as ASIs vide Notification dated 05-06-2020. (Copy as annex "D")
5. That on 01-07-2020 subsequent Notification was issued by R. No. 01 and services of appellant etc were regularized from the date of their initial recruitment. The name of appellant was figured at S. No. 19. (Copy as annex "E")
6. That on 24-07-2020, appellant etc submitted representation before R. No. 02 to finalize / issue seniority list with effect from the date of initial recruitment with other colleagues as promotion to the upper rank was took on place but in vain. (Copy as annex "F")
7. That on 07-09-2020, appellant etc filed Writ Petition No. 3900-P/20 "Abdul Sattar, etc, vs CCPO & another" for direction to respondents to issue joint seniority list with others and to bring his name on list "F" with all back benefits. (Copy as annex "G")
8. That on 12-10-2020, R. No. 01 circulated Seniority List of Officiating Sub Inspectors and Assistant Sub Inspectors with List "E" wherein name of appellant was figured at S. No. 48 and his name was brought on List "E" from the date of appointment instead of with immediate effect as per court decision. (Copy as annex "H")
9. That on 26-02-2021, R. No. 01 issued Notification wherein on the recommendation of Departmental Selection Committee, appellant was promoted to the rank of Officiating Sub-Inspector with effect

ATTESTED

CLERK  
Peshawar  
Service Tribunal  
Peshawar

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from 16-04-2014 and his name was placed at S. No. 21. (Copy as annex "I")

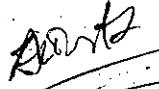
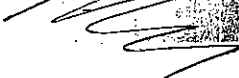
10. That in light of the Writ Petitions regarding promotion, confirmation and antidation, DPC was constituted who examined the cases and held therein that it was principally agreed to grant favour to incumbents of their SHO period served during acting charge basis period and those PASIs of the batches who had completed their mandatory period, prior to amendment shall be confirmed on old criteria while those who could not completed periods prior of SHO, etc shall be confirmed as SI after completion of mandatory period (SHO etc). However on completion of the said period left over's PASIs shall be confirmed and he be assigned seniority with their batch. (Copy as annex "J")
11. That in pursuance of the decision of the said DPC, R. No. 01 issued Notification on 16-03-2021 wherein colleagues of appellant were confirmed in the rank of SIs with effect from the date, they completed mandatory period provided in PR 13.02 and Standing Orders issued from time to time. (Copy as annex "K")
12. That appellant was never deputed by the department for completion of mandatory periods of SHO etc so he was not dealt with as per Notification dated 16-03-2021 of R. No. 01. He was deprived from confirmation as SI, so on 30-03-2021, he submitted representation before R. No. 02 to treat him at par with others as per Notification dated 16-03-2021 but in vain. (Copy as annex "L")

Hence this appeal, Inter Alia, on the following grounds:-

#### GROUND S

- a. That appellant is serving the department with devotion and no complaint, whatsoever, was made against him in this respect.
- b. That appellant was deprived from confirmation as Sub Inspector for the sole reason that he has not gone through the mandatory periods of SHO, etc. which objection is incorrect and illegal for the reason.

ATTESTED  
  
Khyati Pakhutiwala  
Service Tribunal  
Mumbai



that it was the duty of the respondents to depute him for the purpose and when the respondents did not do so, then who be made responsible for the same.

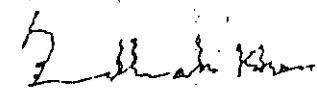

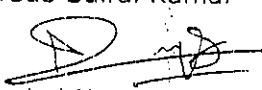
- c. That it was held time and again not only by this non'ble Tribunal but also by the apex court that when the department failed to honor its objection, there no shall be hold responsible for the same and was give the relief sought for.
- d. That in the circumstances, appellant is entitled to be confirmed as SI from the date of Officiating i.e. 16-04-2014.
- e. That in the circumstances, the impugned Notification to extent of not confirming appellant as Sub Inspector since 16-04-2014 is based on discrimination and malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 16-03-2021 of R. No. 01 be modified / reviewed and appellant name be included in the Notification dated 16-03-2021 and be shown confirmed Sub Inspector from the date of promotion to the rank of Officiating Sub Inspector i.e. 16-04-2014 and further to bring his name on list "F" with effect from 16-04-2014 with all service benefits with such other relief as may be deemed proper.

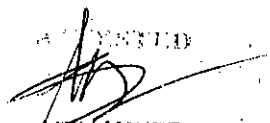


Appellant

Through

  
Saadullah Khan Marwat  
Arbab Saiful Kamal  
Amjad Nawaz  
Advocates

Dated: 13-07-2021

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

3 8

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7051/2021



BEFORE: MRS. RASHIDA BANO ... MEMBER(J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Saleem Khan, Sub-Inspector No. 786/P Capital City Police, Peshawar.  
.... (Appellant)

VERSUS

1. Capital City Police Officer, Police Lines Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.  
....(Respondents)

Mr. Arbab Saiful Kamal  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....15.07.2021  
Date of Hearing.....10.10.2023  
Date of Decision.....10.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J):The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal, order dated 16.03.2021 of respondent No.1 be modified/reviewed and appellants be confirmed as Sub-Inspector from the date of promotion to the rank of officiating Sub-Inspector i.e 16.04.2014 with all service benefits instead of 21.01.2021.”**

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 7052/2021 titled “Mansoor Khan Vs. Police Department” (2) Service Appeal No. 7053/2021 titled “Ayub Khan Vs. Police Department”(3) Service Appeal No. 7054/2021 titled “Laiq Zada Vs. Police Department” (4) Service Appeal

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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No. 7055/2021 titled "Muhammad Arif Khan Vs. Police Department" (5) Service Appeal No. 7056/2021 titled "Muhammad Arshad Vs. Police Department" (6) Service Appeal No. 7057/2021 titled "Syed Asghar Khan Vs. Police Department" (7) Service Appeal No. 7058/2021 titled "Muhammad Waqas Yousaf Vs. Police Department" (8) Service Appeal No. 7059/2021 titled "Muhammad Rafiq Khan Vs. Police Department" (9) Service Appeal No. 7060/2021 titled "Tehseen Ullah Khan Vs. Police Department" (10) Service Appeal No. 7061/2021 titled "Akhtar Hussain Vs. Police Department" (11) Service Appeal No. 7062/2021 titled "Muhammad Ayaz Khan Vs. Police Department" (12) Service Appeal No. 7063/2021 titled "Adil Syed Vs. Police Department" (13) Service Appeal No. 7074/2021 titled "Muhammad Muhammad Mubarak Zeb Vs. Police Department" (14) Service Appeal No. 7083/2021 titled "Muhammad Tahir Khan Vs. Police Department" and (15) Service Appeal No. 7596/2021 titled "Manzoor Khan Vs. Police Department" as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal, are that appellants were initially appointed as Probationer Assistant Sub-Inspector in the year 2010-11. On 13.08.2014 services of the appellants were regularized with immediate effect instead from the date of their initial appointment i.e 26.03.2011. Appellant alongwith others filed writ petition No. 3720-P/2018, which was allowed vide judgment dated 24.04.2019. On 05.06.2020 respondent No.1 in pursuance of court order issued "E" list of seniority of the appellants with effect from the date of their initial appointment. On 01.07.2020 subsequent notification of colleagues of appellants was issued who were regularized from the date of their initial appointment. Appellant alongwith others were promoted to the rank of

Officiating Sub-Inspector w.e.f 16.04.2014. Vide notification dated

EXAMINED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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16.03.2021 appellants were confirmed in the rank S.I w.e.f 21.01.2021. Feeling aggrieved, he filed departmental appeal on 30.03.2021, which was not responded, hence the instant service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

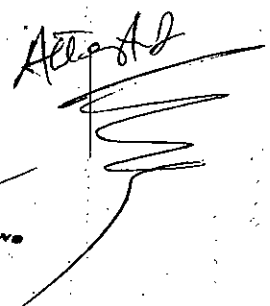
5. Learned counsel for the appellant argued that appellants were not treated in accordance with law and rules. He contended that appellants were deprived from confirmation as S.I for the on the ground that he has not gone through the mandatory period of SHO etc. which objection is incorrect and illegal. He further contended that appellant is entitled to be confirmed as S.I from the date of promotion to the rank of officiating Sub Inspector i.e. 16. 04.2014. He submitted that notification dated 16.03.2021 is liable to be modified with effect from 16.04.2014 instead of with immediate effect.

6. Learned District Attorney contended that the appellants have contended that confirmation in the rank of S.I is subject to fulfillment of rule 13.10(2) and standing order issued by the provincial police officer from time to time; that the appellant was required to qualify the requisite criteria for confirmation in the rank of S.I. He further contended that appellants were confirmed S.I, when they fulfilled the mandatory requirement and orders are issued with immediate effect and not with retrospective effect as per law and rules. He added that colleagues of the appellant were promoted after fulfilling the requisite criteria.

7. Perusal of record reveals that appellant alongwith others were appointed as ASI in Police Department on 26.03.2011. Services of the

ATTESTED

EXAMINER  
Khyber Pachtunkhwa  
Service Tribunal  
Peshawar

*Attest AD*  


*R*

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appellants were regularized on 13.08.2014 with immediate effect instead of from the date of initial appointment i.e 26.03.2011. Appellant filed writ petition for giving direction to respondents to regularize services appellant with effect from the date of initial appointment which was allowed and respondents issued notification to this effect on 05.06.2020 and name of the appellant was figured at Sr. No. 13 of list E but on 01.07.2020 services of the colleagues of the appellant were confirmed by ignoring appellant. On 12.10.2020 seniority list of officiating Sub-Inspector upon respondent of DSC by keeping his name at serial No. 39 it was decided in DPC that ASI who completed their SHO period during acting charge basis was given favour by confirmation and those who had not completed mandatory SHO period they will complete it and after completion they will be assigned seniority with their batch mates. As a consequence respondent No.1 issued notification of appellant's services confirmation with effect from 21.01.2021, the date upon which appellant completed mandatory training i.e 21.01.2021. Appellant was never recommended by respondents for mandatory training of SHO period, so he was deprived from confirmation alongwith his other colleagues on 16.04.2014. Record reveals that only reason for non confirmation of the appellant as S.I from 16.04.2014 like other colleagues was that appellant had not completed mandatory SHO period in accordance with Police Rules 13.10(2) of Police Rules, 1934, which is reproduced as under:

*"No Sub-Inspector shall be confirmed in substantial vacancy unless he has been tested for a year of an officiating Sub-Inspector in independent charge of a Police Station, a notified police post, or as In-charge investigation of a police station or in counter terrorism."*

To this effect the worthy apex Court as well as this Tribunal, in numerous judgments have held that condition of posting as envisaged in the rule ibid,

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Attested  
[Signature]

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as impediment in the way of confirmation as S.I was not attributable to the appellant because postings were beyond control of the appellants, which powers rests with the competent authority and subordinate officials cannot be punished for such administrative lapses on part of the relevant authority, hence depriving him from being confirmed in the rank of SI alongwith batch mates would tantamount to his deprivation from further progression, which was not justified. It was also noted that respondents totally ignored Rules 13.18 of Police Rules, 1934, wherein it is laid down that all police officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards a period of probation. On the conclusion of probation period a report shall be rendered to the authority empowered to confirm the promotion who shall confirm the officer or revert him.

8. In view of the forgoing discussion, we are of the considered opinion that case of the appellant is similar in nature with the cases already decided by this Tribunal as well as by the apex court, as referred to by counsel of the appellants. For the reasons, we are inclined to accept the present appeal with directions to the respondents to confirm the appellants as SI from the date when his other colleagues were confirmed, as well as place him in due place in the seniority list. The appellants are also held entitled to all consequential benefits, if any. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of October, 2023.

(MUHAMMAD AKBAR KHAN)  
Member (E)

(RASHIDA BANO)  
Member (J)

CHIEF JUSTICE  
Khuzdar  
Service Tribunal  
Peshawar

RECORDED  
10/10/23

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C 13

To

1. Capital City Police Officer,  
Peshawar.
2. Provincial Police Officer,  
KP, Peshawar.

**Subject: - COMPLIANCE OF JUDGMENT DATED 10-10-2023 OF THE HON'BLE SERVICE TRIBUNAL PASSED IN SERVICE APPEAL NO. 7059/2021 IN LETTER AND SPIRIT.**

Respected Sir,

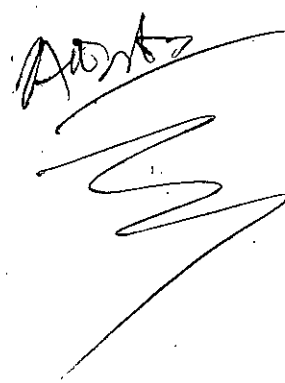
Please comply with the order dated 10-10-2023 of the Hon'ble Service Tribunal, KP, Peshawar passed in the said Service Appeal in letter and spirit without fail. (Certified copy attached)

Humble Appellant



Muhammad Rafique Khan  
Sub-Inspector No. 772/P  
Capital City Police, Peshawar.  
Cell No. 0311-0099734

Dated. 29-11-2023



بعد التّ جتای سرسٹریٹ ٹریڈ پورٹل صوبہ سندھ ایسٹ اور

منوانب ایسٹ

عمر رفیق خان بنام محکمہ لیس

دعویٰ اپیل Execudra

باعث شکریہ ایسٹ

بمقام مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام ایسٹ اور  
 کیسٹ ایسٹ کے خان سرور نے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب  
 موقوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے رہتی نامہ و آفٹرنالٹ و تیسرا برتاف  
 دینے جواب دہی اور اقبال دعویٰ اور لیسٹریٹ ڈگری کرنے اجراء اور وصولی چیک و ڈیپو اور مرضی دعویٰ اور درخواست  
 ہر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کیطرف یا اپیل کی برآمدگی  
 اور مستحق بنیاد پر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ  
 کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقدیر کا اختیار ہوگا  
 اور اس پر مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واضح منظور  
 قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجا و انصاف مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب  
 موقوف ہوں گے نیز لیا اور فرسب کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاخیر پیشی مقام درجہ  
 پر ہو یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔  
 لہذا وکالت نامہ دیکھ دیا کہ سند ہے۔

الرقوم ۱۰-۰۱-۶۶

التعبید

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التعبید

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ارباب نیگ ایسٹ  
ایڈووکیٹ

مسٹر ایسٹ  
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Janat

محمد نواز  
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