


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 70/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.01.2024	<p>The implementation petition of Mr. Mushtaq Ali submitted today by Mr. Bashir Khan Wazir 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 the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

CM No. _____/2024

In Execution Petition No. _____/2023

In the matter of

Service Appeal No. 387/2019

Decided on 16.07.2021

Mushtaq Ali (S- Tehsildar), S/o Charagh

R/o Shaheed Abad Shawa Tehsil Razha, District Swabi.

.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S) Department, Peshawar.
2. The Senior Member Board of Revenue, Civil Secretariat, Peshawar.
3. Deputy Commissioner Swabi.

.....Respondents

**APPLICATION FOR FIXATION OF THE EXECUTION
BEFORE THE PRINCIPAL SEAT OF HON'BLE SERVICE
TRIBUNAL ON THE GROUND THAT THE DECISION /
JUDGMENT HAS BEEN RENDERED BY THE PRINCIPAL
BENCH OF SERVICE TRIBUNAL AND THE PRESENT
EXECUTION PETITION IS REQUIRED TO BE FIXED
BEFORE THE PRINCIPAL BENCH.**

Respectfully Sheweth:

1. That the above titled Execution Petition has been filed by the appellant before this Hon'ble Tribunal for implementation of the Judgment rendered by this Hon'ble Tribunal on Principal bench.
2. That though the appellant / applicant posting at District Buner Tehsil Khadukhel, while the appellant / applicant removal order was set aside by this Hon'ble Tribunal at Principal Bench, in this respect the appellant time and again

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approached to the competent authority for implementation of the Judgment in letter and spirit, however till date the respondents are reluctant from implementation.

3. That the main file of the Appeal is also lying in the office of the Principal Seat of this Hon'ble Tribunal and Proprietary demands to fix the same before the Principal Bench and to implement the Judgment in letter and spirit.
4. That there is no legal bar on acceptance of this Application.

It is, therefore, most humbly prayed that on acceptance of this Application, directions may kindly be issued to entertain the Execution Petition before this Hon'ble Tribunal at principal bench and to avoid the complication in the execution of the Order of this Hon'ble Tribunal.

Dated: 15.01.2024

Through

Appellant / Applicant



BASHIR KHAN WAZIR
Advocate, High Court
Peshawar

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BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

CM No. _____/2024

In Execution Petition No. _____/2023

In the matter of

Service Appeal No. 387/2019

Decided on 16.07.2021

Mushtaq Ali.....Appellant

V E R S U S

Government of Khyber Pakhtunkhwa & others.....Respondents

AFFIDAVIT

I, Mushtaq Ali (Tehsildar), S/o Charagh R/o Shaheed Abad Shawa Tehsil Razha, District Swabi, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


DEPONENT

(Printed Name of Oath Commissioner)
Oath Commissioner
Distt. Swabi
15/11/2024

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

EP
GM No. 70 /2024

In the matter of
Service Appeal No. 387/2019
Decided on 16.07.2021

**Mushtaq AliAppellant
V E R S U S
Govt of KPK & others.....Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for implementation		1-2
2.	Affidavit		3
3.	Copy of the Judgment and Order dated 16.07.2021+ Departmental Appeal.	A	4-260
4.	Wakalat NAMA		27

Dated: 20.10.2023

Through **Appellant / Applicant**



**BASHIR KHAN WAZIR
Advocate, High Court
Peshawar**

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

EP
GM No. 70 /2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10558

Dated 15-1-2024

In the matter of

Service Appeal No. 387/2019

Decided on 16.07.2021.

Mushtaq Ali (~~Ex~~-Tehsildar), S/o Charagh

R/o Shaheed Abad Shawa Tehsil Razha, District Swabi.

posted, Tehsil Adar Madukhel Distt Buner.

.....Appellant

V E R S U S

1. Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S) Department, Peshawar.
2. The Senior Member Board of Revenue, Civil Secretariat, Peshawar.
3. Deputy Commissioner Swabi.

.....Respondents

**APPLICATION FOR THE IMPLEMENTATION OF
THE JUDGMENT AND ORDER DATED 16.07.2021
IN THE CAPTIONED SERVICE APPEAL NO.
387/2019 OF THIS HON'BLE TRIBUNAL.**

Respectfully Sheweth:

1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 16.07.2021.
2. That vide judgment and order dated 16.07.2021 this Hon'ble Tribunal while accepting the Appeal of the Appellant, issued directions to the respondents to reinstate the appellant from the date of his dismissal with all back benefits. **(Copy of the Judgment and Order dated 16.07.2021 is attached as Annexure A)**
3. That the Judgment and Order of this Hon'ble tribunal was duly communicated to the Respondents by the Petitioner and submitted an Application implementation of the Order

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of this Hon'ble Tribunal. Thereafter the Petitioner is continuously approaching the Respondents for the implementation of the Judgment and Order dated 16.07.2021, however they are reluctant to implement the same.

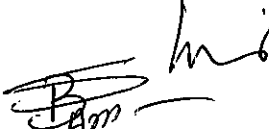
4. That the appellant was filed an application for implementation, vide which the respondents only issued reinstatement order of the appellant but had not granted back benefits to the appellants and are not implementing the Order of this Hon'ble Tribunal.
5. That despite of issuance of reinstatement order of the appellant with all back benefits, the respondents only issued reinstatement order and all back benefits are still not granted to the appellant.
6. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 16.07.2021 in its true letter and spirit without any further delay, which has already been delayed due to the malafide intention of the Respondents.
7. That the valuable rights of the appellant are involved in the instant case and the Respondents are violating the legal and fundamental rights of the Petitioner by not reinstating the appellant into his service with all back benefits.
8. That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

On acceptance of this Application, the Order and Judgment dated 16.07.2021 of this Hon'ble Tribunal may Kindly be implemented in its true letter and spirit. And the Respondents may graciously be directed to reinstate the appellant from the date of his dismissal with all back benefits.


Appellant / Applicant

Through

Dated: 20.10.2023


BASHIR KHAN WAZIR
Advocate, High Court
Peshawar

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

CM No. ____/2023
In the matter of
Service Appeal No. 387/2019
Decided on 16.07.2021

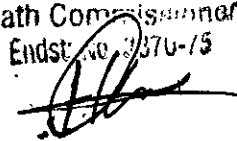
**Mushtaq AliAppellant
VERSUS
Govt of KPK & others.....Respondents**

AFFIDAVIT

I, Mushtaq Ali (Ex-Tehsildar), S/o Charagh R/o Shaheed Abad Shawa Tehsil Razha, District Swabi, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

20-10-2023


DEPONENT

Humaira Rehman Advocate
Oath Commissioner
Endst. No. 376-15


BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

ANX 'A' 4

Service Appeal No. 387/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 371

Dated 20/3/2019

Mushtaq Ali, (Ex.-Teshildar), S/o Charagh
R/o Shahd Abad Shawa Tehsil Razha, District Swabi.

.....Appellant

V. VERSUS

- 1) Government of Khyber Pakhtunkhwa, Secretary Board of
Revenue (R&S) Department, Peshawar.
- 2) The Senior Member Board of Revenue, Civil Secretariat,
Peshawar.
- 3) Deputy Commissioner Swabi.

.....Respondents

Filed to-day

Registrar

20/3/19

**APPEAL NOS 4 OF KP SERVICE
TRIBUNAL ACT, 1974 AGAINST ORAL
DISMISSAL ORDER DATED 07.12.2018,
WHEREBY SERVICE OF THE
APPELLANT WERE DISMISSED, AND
APPELLATE ORDER DATED 01.03.2019
WHEREIN DEPARTMENTAL APPEAL
FILED BY PETITIONERS HAS BEEN
DISMISSED, WHICH IS ILLEGAL
AGAINST LAW AND FACTS.**

PRAYER:

On acceptance of this appeal, the
impugned dismissal order dated
07.12.2018 and appellate order dated
01.03.2019 may please be set-aside
and appellant may please be
reinstated in service with all back
benefits.

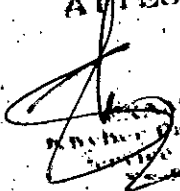
ATTEST
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(2)
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Appellant humbly submits as under;-

- 1) That appellant was appointed as Junior Clerk vide order dated 01.02.1984 in District Peshawar in Commissioner Office.
- 2) That appellant was transferred to Mardan Commissioner Office in 1988, when Mardan was raised as Division.
- 3) That appellant was promoted as Senior Clerk and then promoted as Assistant B(BPS-15) in the year 1993.
- 4) That thereafter, due to his satisfactory services, the appellant was further promoted as Tehsildar (BPS-16) vide order dated 20.12.2017.
- 5) That during his service as Tehsildar, the appellant was served with a charge sheet / statement of allegation, which was properly replied by the appellant and denied the allegations leveled against him. **(Copy of charge sheet, statement of allegations, show cause notice and reply of appellant are Annex "A")**
- 6) That appellant was not associated with any inquiry proceedings nor any opportunity has been given to appellant for his personal hearing, and thus he was dismissed from service. **(Copy of dismissal order 07.12.2018 is Annex "B")**
- 7) That appellant filed departmental appeal, which was dismissed vide order dated 01.03.2019. **(Copy of departmental appeal is Annex "E" and appellate order dated 01.03.2019 is Annex "F")**

ATTESTED


District Peshawar
District Commissioner

- 8) That the impugned dismissal and order dated 28.11.2018 and appellate Order dated 01.3.2019 passed by respondents No.1 & 2 are illegal, against law and facts on the following grounds:-

(3)
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GROUND

- A. Because impugned dismissal order is a void order.
- B. Because appellant is innocent and has falsely been implicated in the case in hand.
- C. Because appellant has been condemned unheard as no opportunity of proper hearing has been afforded to appellant.
- D. Because appellant is not associated with the fact finding inquiry and is back biting.
- E. Because none of the witness has been examined in presence of appellant.
- F. Because appellant has not been given opportunity of hearing.
- G. Because the Khyber Pakhtunkhwa E&D Rules,2011 are ultravires as not framed the Governed and Chief Minister has got no autotypy to frame rules.
- H. Because as per repeal of R.S.O Act, the earlier E&D Rules, 1973 are revived.
- I. Because where through Assembly, revived NWFP Rules, 1973, KP E&D Rules, 2011 by Chief Minister are ultravires without lawful authority and of no legal effect. As Assembly is superior to executive authorities.
- J. Because appellant is jobless and entitled for back benefits.

ATTORNEY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

It is therefore, humbly prayed that, the impugned dismissal order dated 07.12.2018 and

appellate order dated 01.03.2019 may please be set-aside and appellant may please be reinstated in service with all back benefits.

(4)
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Any other relief deemed appropriate in the circumstances of the case may kindly also be granted.

Appellant

Through

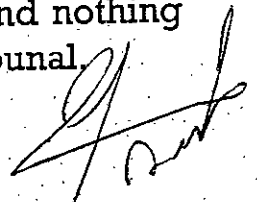
Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan


VERIFICATION

It is verified that, the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.



Deponent



ATTESTED

Secretary, Ministry of Labour
Government of Punjab
Lahore

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

(8)

Service Appeal No. _____/2019

Mushtaq AliAppellant

VERSUS

Government of Khyber Pakhtunkhwa,
Secretary Board of Revenue (R&S) Department, Peshawar
& othersRespondents

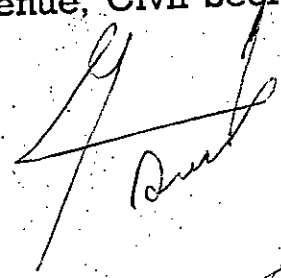
ADDRESSES OF PARTIES

APPELLANT

Mushtaq Ali, (Ex.-Tasildar), S/o Charagh
R/o Shaheed Abad Shawa Tehsil Razha, District Swabi.

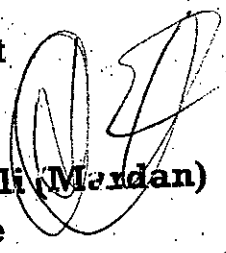
RESPONDENTS

- 1) Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S) Department, Peshawar.
- 2) The Senior Member Board of Revenue, Civil Secretariat, Peshawar
- 3) Deputy Commissioner Swabi.



Mushtaq Ali
Appellant

Arjad Ali (Mardan)
Advocate
Supreme Court of Pakistan





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

Service Appeal No. 387/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 371

Dated 20/3/2019

Mushtaq Ali, (Ex.-Teshildar), S/o Charagh
R/o Shahd Abad Shawa Tehsil Razha, District Swabi.

.....Appellant

VRSUS

- 1) Government of Khyber Pakhtunkhwa, Secretary Board of
Revenue (R&S) Department, Peshawar.
- 2) The Senior Member Board of Revenue, Civil Secretariat,
Peshawar
- 3) Deputy Commissioner Swabi.

.....Respondents

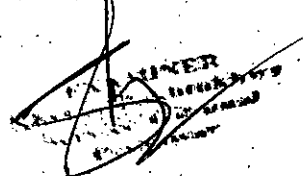
**APPEAL NOS 4 OF KP SERVICE
TRIBUNAL ACT, 1974 AGAINST ORAL
DISMISSAL ORDER DATED 07.12.2018,
WHEREBY SERVICE OF THE
APPELLANT WERE DISMISSED, AND
APPELLATE ORDER DATED 01.03.2019
WHEREIN DEPARTMENTAL APPEAL
FILED BY PETITIONERS HAS BEEN
DISMISSED, WHICH IS ILLEGAL
AGAINST LAW AND FACTS.**

Filed to-day

Registrar

20/3/19

ATTESTED


REGISTRAR
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

PRAYER:

On acceptance of this appeal, the
impugned dismissal order dated
07.12.2018 and appellate order dated
01.03.2019 may please be set-aside
and appellant may please be
reinstated in service with all back
benefits.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 387/2019

Date of Institution ... 20.03.2019

Date of Decision ... 16.07.2021



Mushtaq Ali. (Ex.Teshildar). S/o Charagh R/o Shaheed Abad Shawa Tehsil Razart,
District Swabi. (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, Secretary Board of Revenue (R&S)
Department. Peshawar and two others. (Respondents)

Present:

MR. AMJAD ALI.
Advocate

--- For Appellant.

MUHAMMAD ADEEL BUJT.
Additional Advocate General

--- For respondents.

AHMAD SULTAN TAREEN
ROZINA REHMAN

--- CHAIRMAN
--- MEMBER(Judicial)

JUDGEMENT.

AHMAD SULTAN TAREEN, CHAIRMAN. The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby his dismissal from service purporting it being against the facts and law on the subject.

2. The appellant, as he claims, was appointed as Junior Clerk in the year 1984 who in progression of his career held the post of Senior Clerk, then Assistant and then as Tehsildar (BPS-16). During his service as Tehsildar under the Senior Member Board of Revenue (SMBR), Khyber Pakhtunkhwa Peshawar, he was

served with the charge sheet/statement of allegations as reproduced herein below:-

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 11
- a. During surprise visit of Deputy Commissioner office Swabi on 29.05.2017 to the Arms License Branch a register "Labeled as PS Swabi containing 557 entries alongwith 17 License copies (15 of which were found signed under fake signatures) and five copies were recovered" through the issuance of Manual License copies was banned with the introduction of Computerized Arm License Branch on 21.02.2017.
 - b. He did not bother to check original CNICs at the time of submission of applications for fresh Non Prohibited bore arm licenses which resulted in the issuance of Arms Licenses to the Minors (age less than 21 years) and ineligible persons in violation of rules/policy.
 - c. Some private persons/individuals were seen making entries of their choice in the official record (e.g Mr. Sajid Ali son of Muhkim resident of Maneri who was caught red handed by the DC while making entries in the official record).
 - d. This act on his part tantamount to misconduct and liable him to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

3. The Appellant, as directed to submit his written defense to the Inquiry Officer, submitted the same well in time. However, he in his appeal has purported to have not been associated with the inquiry proceedings or of having been given any opportunity of personal hearing before his dismissal from service vide impugned order dated 07.12.2018. Feeling aggrieved, he filed departmental appeal which was rejected vide order dated 01.03.2019, and in follow-up, the present service appeal was preferred. After its admission for full hearing, Respondents were put on notice for attendance and their written reply/comments. They emerged as contestants of the Appellant's appeal and filed their written reply refuting the relief sought by him.

We have heard the arguments and perused the record.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5. It was argued on behalf of the appellant that he had got no legal role as far as issuance of arms licenses is concerned, which is a matter governed by the prescribed rules. The appellant's role in the affairs of License Branch of DC office Swabi was nothing more than a support staff working under direct supervision of the Office Superintendent having delegated signatory powers to sign the licenses given by the DC. So, it was not possible for the appellant to forge the signatures of the Superintendent under his nose. The counsel for the appellant concluded his arguments with the submission that entire proceedings against the appellant are sham and illegal and he was made a scapegoat.

6. Conversely, it was argued on behalf of the respondents that the appellant was custodian of the record of the License Branch. He misused his position by allowing private persons to collaborate with him in preparation of fake record of licenses and for forgery of the signatures for issuing licenses with fake signatures. He was caught red handed by the then Deputy Commission during his surprise visit of the license branch. After fact finding inquiry, he was found liable for disciplinary proceedings. So he was properly served with charge sheet and statement of allegations for conducting inquiry through a duly appointed Inquiry Officer. He was found guilty by the Inquiry Officer and the Competent Authority having satisfied itself about due course of the inquiry proceedings proceeded further to issue him final show cause notice. The Appellant could not offer sufficient cause to absolve him from the penalty proposed in the show-cause notice, and it was his fate to get the major penalty because of his grave misconduct. Learned AAG concluded his submissions with the argument that the penalty imposed upon the appellant is outcome of valid disciplinary proceedings leaving no room for any leniency in favor of the appellant and he vehemently pressed for dismissal of appeal.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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7. We have carefully weighed the argument advanced from both sides in juxtaposition with the record available on file. The pertinent questions which emerge for our determination are: (1) That in view of the facts of the disciplinary proceedings culminating in imposition of major penalty upon the Appellant, whether he and exonerated co-accused were *in pari delicto* meaning "in equal fault"? and (2) Whether the incident taken as ground for disciplinary action against the Appellant emanates from the affairs of the License Branch of Deputy Commissioner office in District Swabi, which are subject of collective responsibility; if so, whether isolation of the Appellant for punishment withstands the test of fairness in such treatment?

8. Needless to say that the appeal at hand has been preferred to impugn the imposition of major penalty upon the Appellant resulting from allegations enumerated in the charge sheet and statement of allegations which have been reproduced herein above as part of the facts. Dr. Qasim ADC (Additional Deputy Commissioner), Mardan was appointed as Inquiry Officer (for short "IO"). The Inquiry Report as submitted by him is available on file being part of written statement/comments of the respondents. As the record procured by the IO during inquiry proceedings was not annexed with the written reply of respondents, it was in the course of further proceedings that they were directed vide order dated 11.03.2020 to produce copy of complete inquiry record. The same after several adjournments was produced on 10.02.2021 and was placed on file. When the Appellant purports to have not been associated with the inquiry proceedings, the litmus test of the Inquiry Report has become necessary. So, before scanning the inquiry record, Rules 11 and

12 of the Khyber Pakhtunkhwa Government Servants (Efficiency &

Service (Efficiency & Discipline) Rules, 2011 are reproduced herein below for advantage:-

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service (Efficiency &
Discipline)

11. Procedure to be followed by inquiry officer or inquiry committee.---(1) On receipt of reply of the accused or on expiry of the stipulated period, if no reply is received from the accused, the inquiry officer or the inquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defense of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witness.

(2) If the accused fails to furnish his reply within the stipulated period, the inquiry officer or the inquiry committee, as the case may be, shall proceed with the inquiry ex-parte.

(3) The inquiry officer or the inquiry committee, as the case may be, shall hear the case on day to day and no adjournment shall be given except for reasons to be recorded in writing, in which case it shall not be of more than seven days.

(4) Statements of witnesses and departmental representative(s), if possible, will be recorded in the presence of accused and vice versa.

(5) Where the inquiry officer or the inquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the inquiry, he or it shall administer a warning and if, thereafter, he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the inquiry in such manner as may be deemed expedient in the interest of justice.

(6) If the accused absents himself from the inquiry on medical grounds, he shall be deemed to have hampered or attempted to hamper the progress of the inquiry, unless medical leave, applied for by him, is sanctioned on the recommendations of a Medical Board; provided that the competent authority may, in its discretion, sanction medical leave up to seven days without such recommendations.

(7) The inquiry officer or the inquiry committee, as the case may be, shall submit his or its report, to the competent authority within thirty days of the initiation of inquiry:

Provided that the inquiry shall not be vitiated merely on the grounds of nonobservance of the time schedule for completion of the inquiry.

12. Powers of the inquiry officer or inquiry committee.---(1) For the purpose of an inquiry under these rules, the inquiry officer or the inquiry committee, as the case may be, shall have the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (Act No.V of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents, and receiving evidence on affidavits; and

(c) issuing commissions for the examination of witnesses or documents.

ATTESTED

EXAMINER
Navyal Panchukhwa
Service Tribunal
Pune

[Handwritten signature]

(2) The proceedings under these rules shall be deemed to be the judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

9. It is pertinent to point out that the inquiry report as produced on record reveals the disposal of disciplinary proceedings initiated by issuing of charge sheet and statement of allegations separately to one Imtiaz Ahmed, Superintendent of Deputy Commissioner (DC) Office, Swabi and to Mushtaq Ali, the Appellant. After preliminary discussion, the IO when came on description of inquiry proceedings, he maintained that after launching inquiry proceedings, the official namely Imtiaz Ahmed Superintendent was summoned who appeared and submitted his respective formal statement alongwith the relevant documents in support of his assertion in context of allegations. Similarly, Mushtaq Ali Assistant also appeared and submitted his written statement having no documents in his support. The IO in addition to the said statement of Imtiaz Ahmed also got from him his detailed para-wise written statement which in essence, as particularly discussed by the IO in his report, was treated as evidence against the appellant. Reportedly, the IO stood contented after appearance of on Sahib Zada Assistant of DC office before him who furnished copies of the documents and statements, which certainly were part of the inquiry reports previously conducted for fact finding in relation to matters of the License Branch of DC Office, Swabi; and he i.e. IO neither strived for any more evidence nor did he summoned the appellant to confront him with the record so procured or to afford him with opportunity of saying anything in defense about the material collected as proof of charges against him what to say of opportunity of cross-examination when no statement was recorded by the IO himself. Even, the IO did not feel it important to associate the Departmental Representative with the inquiry

ATTESTED

EXAMINER
 Joint Appellate
 Service Tribunal
 Islamabad

proceedings despite the fact that it was specifically provided in the statement of allegations that the accused and a well conversant representative of the Director Land Records Office shall join the proceedings on the date, time and place fixed by the IO. The significance of presence of the Departmental Representative is evident from provisions of Rule 13 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 as reproduced herein below:-

13. Duties of the departmental representative.---*The departmental representative shall perform the following duties, namely:*

(a) render full assistance to the inquiry officer or the inquiry committee, as the case may be, during the proceedings where he shall be personally present and fully prepared with all the relevant record relating to the case, on each date of hearing;

(b) cross-examine the witnesses produced by the accused, and with the permission of the inquiry officer or inquiry committee, as the case may be, may also cross-examine the prosecution witnesses; and

(c) rebut the grounds of defense offered by the accused before the inquiry officer or the inquiry committee, as the case may be.

10. The IO in his report, based on statements and documents presented before him, in the mode and manner herein above stated, found the job description of the appellant as License Clerk which therefrom is copied below:-

- i. Receiving applications for arms licenses and its submission to the Deputy Commissioner for approval as per authorized monthly quota of the District;
- ii. After approval and then before the issue of arms license, depositing of its fee in the NBP through challan under proper head of account;
- iii. At the end of each and every month, reconciliation of all challan from the concerned District Accounts Office, through which the license fee was deposited during the month;
- iv. At the time of receiving applications for arms licenses, checking of original CNICs of each applicant especially for fitness of his age for arms licenses; and

ATTESTED

[Signature]
 Director Land Records Office
 Peshawar

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v. **Maintaining of the entire office record of the branch including license issue register.**

F1. The observations of the IO following the job description of the appellant include that the accused official did not show efficiency in discharging of functions and had not acted honestly and flouted the orders alongwith prescribed rules and regulation relating to the "Arm License" and such wrongful acts committed by the accused rendered him liable to be proceeded against under Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules 2011. On plain reading of the said observation, it seems quite random. After sideline discussion by the Inquiry Officer in the given style, his account under the caption of findings in the inquiry report is copied therefrom herein below:

"Keeping in view the above facts and position of the matter it has become clear that the accused official namely Mushtaq Ali, License clerk (Assistant) has committed gross negligence in performing his assigned duty while his posting in the License Branch and has recklessly and unlawfully allowed un-authorized persons to work in the government office. The irresponsible way of function which the accused official performed, has also inflicted considerable financial loss to the Government exchequer who has covertly maintained a fake and parallel record in the branch in order to collect ill-gotten money. Since the Computerization of Arms license was put in place at that time, then the illegal act in preparation of manual license copies is also added in his wrongdoings. Moreover, the fee accrues from the license copies, were unlawfully retained by the accused official and he did not deposit it into the Government treasury and this irresponsible act of the accused official is also counted in his offense."

F2. Although the IO in his observations after disclosing the job description of Appellant held him merely negligent but in the same report ahead, he in his findings randomly linked his negligence with financial loss to the

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 government exchequer. Yet he could not make any material point to justify the embezzlement of the license fee by the Appellant and issuance of fake licenses under the fake signature of the competent authority and of retaining parallel and bogus record. Quite contrarily, the IO in recommendation part of the inquiry report, all of a sudden proposed that the appellant was found involved in issuance of licenses under fake signatures of the competent authority and that he retained parallel and bogus record; and also recommended imposition of major penalty upon the appellant with recovery of the amount from the appellant. The co-accused namely Intiaz Ahmed, Superintendent of Deputy Commissioner office, Swabi was exonerated in his inquiry with a presumptive view that had he been involved in the above game or have any sort of connivance with the dealing hand (License Clerk), he would have never disclosed it before the competent authority in time.

13. Leaving the findings and recommendations of IO against the appellant aside for a while, let us observe that in view of our discussion having already gone herein above with reference to style of inquiry proceedings; the IO except association of appellant for one time to receive his written statement in answer to the charge sheet and statement of allegations, had provided no other opportunity of defense as required under sub rules (1) and (4) of Rule 11 of the E&D Rules, 2011. Thus, the impugned order based on such inquiry report is not tenable for this single reason as the competent authority was under legal obligation firstly to determine whether the inquiry was conducted in accordance with provisions of E&D Rules and after satisfaction as to its having been so conducted, it was to further determine whether the charge or charges had been proved against the accused or not. As the competent authority not only failed in determination of compliance of the IO with rules

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but also proceeded further quite erroneously by relying upon the factual part of the Inquiry Report based on the record never confronted to the appellant for its rebuttal. Therefore, we are constrained to examine the case on facts to bring a clear picture of the issues of License Branch of DC Office, Swabi as they were purported to have existed at the time of inquiry conducted by Dr. Qasim, ADC, Mardan; so that we, before parting with this judgment, could be able to give a direction for merit based inquiry, if viable.

14. Before initiation of the formal inquiry under E&D Rules 2011 in pursuance to the charge sheet and statement of allegations served upon the appellant, a fact finding (preliminary) inquiry was conducted by the Additional Deputy Commissioner, Swabi. The IO in his report also adverted to the record of the preliminary inquiry as given to him. It would be useful to copy herein below the relevant part of the main inquiry report comprising discussion relating to the preliminary inquiry:-

"From the record presented to the undersigned and the statements submitted by the concerned officials, it reveals that Mushtaq Ali, Assistant was assigned to perform his duty as 'License Clerk' vide office order bearing No.3531/DCS/EA dated 30.12.2016 who remained in the same branch till sealing of the section by the ADC, Swabi vide order No.1466/DCS/EA dated 08.06.2017 and subsequently he was transferred from his position vide order bearing No. 1478/DCS/EA dated 09.06.2017. After sealing, an inquiry Committee comprising Additional Deputy Commissioner and Assistant Commissioner, Swabi was constituted to probe the matter vide order dated 1366-72/DCS/PS dated 29.05.2017 who jointly conducted the inquiry proceedings and after recording statements of all the concerned officials they formed their opinions and recommended some suggestion which include:

1. Sealing of the License Branch.
2. Transfer of the License Clerk from the post of License Clerk.
3. Detail investigation through District Police Officer following lodging an FIR against the three private persons.

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4. Probing the embezzlement through the Anti-Corruption Establishment.
5. Investigation regarding issue of licenses to under aged with person of out-Districts.
6. Verification of channels used in the issuance of private licenses during the period of the accused license clerk and
7. Serving of charge-sheets and statement of allegations on the official.

15. The IO having discussed the preliminary inquiryas copied above. while concluding the discussion. had observed that out of above recommendation, suggestions at serial No. 1, 2, 4 and 7 were taken into account whereas the rest were not followed for unknown reasons. Notwithstanding his observation about not following the recommendations at serial No. 3, 5 and 6, the IO himself was vested with powers within meaning of Rule 12 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 to deal at least with two points i.e. 2 and 3 for bringing clear picture of the things at the canvas. However, he also did not enter in the said area for reasons best known to him. To our mind, the argument before us that Appellant was made scapegoat seems not without force because the grey area of the affairs was left unattended.

16. It is noteworthy that the disciplinary action against the Appellant was not initiated in pursuance to the preliminary inquiry. Rather it commenced in pursuance to the letter to letter No. 15064/ACE dated 4-10-2017 after about one year from the date of said letter on the subject of "Open Inquiry No. 8/2017-DE against Superintendent, License Clerk, Deputy Commissioner office, Swabi and others" issued from the Directorate of Anticorruption Establishment (ACE) Khyber Pakhtunkhwa, Peshawar addressed to the Deputy Commissioner, Swabi. The latter, vide his office letter No. 228/DCS/EA (CR) dated 10-11-2017, sent the case to the Commissioner.

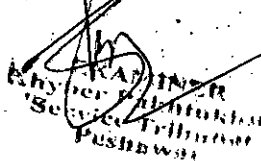
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Mardan stating therein that the matter was referred to Assistant Director Crimes, ACE, Mardan for proper probe and legal action. The matter was probed by them and recommended for departmental inquiry. He i.e. the Deputy Commissioner added that the appointing authority is the Senior Member Board of Revenue (SMBR). The said correspondence, certainly is not deniable by the respondents being part of their record, presumably excludes the allegation of corruption when the anticorruption watchdog seized with the Open Inquiry No. 8/2017 had sent the case to the department for action at their end. If the Deputy Commissioner, Swabi was sure about charges of misappropriation of public money by the Appellant besides fraud and forgery attributed to the latter, the former was legally supposed to report the said charges to the local police so as to bring the Appellant to justice through his criminal prosecution. However, the Deputy Commissioner could no dare to invite the criminal investigation by reporting of crime to the police, but they had not abandoned the said charge in departmental proceedings. Anyhow, the said omission on part of the controlling authority of the License Branch gives rise to a presumption that they avoided to open a Pandora box and decided to rub the issue under carpet by making the Appellant scapegoat for departmental action.

17. The Appellant has not been charged for disciplinary action on the basis of direct evidence rather the charges against him pertain to the record in his custody purporting the same as fake/bogus with inference against him that it was prepared by him or by his connivance with Mr. Imtiaz Ahmed Superintendent who was co-accused with the Appellant. The Inquiry Report divulges the focus of the Inquiry Officer on fixing the Appellant alone by his

all-out ignorance about the contributory role of all those who come in

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 Cyber Authority
 Service Tribunal
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between the License Clerk and the Deputy Commissioner in scheme of things significant in a regulated chain workable towards issuing of arm licenses under the rule.

18. The matter of arms licenses is not a matter of discretion of the executive but it is a regulated exercise under Khyber Pakhtunkhwa Arms rules 2014. Under the said rules, the "Deputy Commissioner" meaning the Deputy Commission of the concerned district and the "Secretary" meaning Secretary to Government Home and Tribal Affairs Department are only two competent authorities under the said rules to issue the licenses of different category prescribed by rules. The matter of licenses which were taken into account for disciplinary action against the appellant was within the competence of Deputy Commission Swabi. Part-II of the Rules 2014 deals with grant of licenses for possession and going armed. Sub-Rule (1) of Rule 13 provides that a license for possession of arm or ammunition and for going armed may be granted, under these rules in form XI by the Deputy Commissioner. Nowhere in the said rules is provided that the Deputy Commissioner or the Secretary being competent authority under the rules have got any competency to delegate their powers of issuance licenses to any of their sub-ordinate. Interestingly, there is copy of an office order of the DC Swabi as part of complete record of inquiry produced on direction of this Tribunal. The said order bearing No. 930 was issued by the DC Swabi on 31-03-2015 to authorize Mr. Imtiaz Ahmed, Superintendent, DC Establishment, Swabi as signatory authority for arms license copies subject to approval of the competent authority. The said Superintendent (co-accused with the appellant) submitted an office note to the Deputy Commissioner stating therein that fresh manual arms licenses copies are being prepared and issued

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 TRIBUNAL
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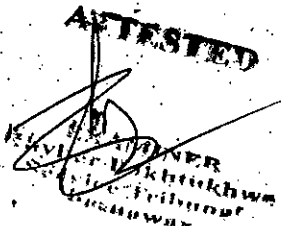
under his fake signature in the previous date without any record/prior approval of the competent authority, in contravention of the Government Policies. Irrespective of question of competency of the Superintendent as to his being signatory of arm licenses, it was duty of the IO to get specimen signatures of the said Superintendent for their comparison with the signature on the license copies recovered from the License Branch and purported to have been issued with fake signature. Why this exercise was omitted seems to be a matter in between the IO and the Superintendent namely Imtiaz Ahmad, who was simply, exonerated by the former and the latter stood absolved from vicarious liability because he had pointed out the game to the Deputy Commissioner. Anyhow, when the IO was competent to embark upon the said exercise of comparison of signature within the meaning of Rule-12 discussed above, the omission on his part is apt to give rise to an inference that had he embarked upon the exercise of comparison of signature, it would have gone against the Superintendent. If there was any illegality or irregularity in issuance of the licenses linked with contributory role of the Superintendent, was screened none else but by the IO who had dealt both the Superintendent and the appellant in one and the same inquiry report on the basis of charge sheet separately issued to Imtiaz Ahmad, Superintendent and the appellant. The proof of this allegation as issuing of licenses with fake signatures of the Superintendent hinged upon the comparison of his admitted signatures with the purported fake signature. Although, there was a specific allegation in charge sheet of the Superintendent as to his connivance with the appellant and another namely Rashid Niaz, Naib Qasid but this part of the allegation in charge sheet of Imtiaz Ahmad, Superintendent remained

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19. From the discussion having so far gone, possible factual and legal inferences include: (1) The Deputy Commissioner being license issuance authority, in absence of any express provision in the Arms Rules about delegation of signatory power to any of his subordinate, had committed irregularity himself by authorizing the Superintendent of his office for this job. (2) If the illegalities in issuing of arms licenses were rampant as purported, expediency of a broad based investigation by the Anticorruption Establishment was unavoidable in the public interest but maybe in backdrop of some hidden agenda, it did not go deeper and opined for a departmental action only. (3) The Deputy Commissioner Swabi, in particular nature of the charges, was not supposed to withhold the opportunity of criminal investigation by local police having not reported the crime under due course of law, if he was sure about forgery and misappropriation of public money in affairs of the License Branch directly under his control. However, he for the reasons best known to him could not do so. (4) The inquiry conducted as part of disciplinary proceedings against the appellant was not fair in terms of collection of record without its confronting the accused; and thus the appellant suffered on account of proceedings conducted having no regard to the due process and necessity of fairness of trial. (5) In the statement of allegations served upon Imtiaz Ahmed, Superintendent, his connivance is alleged with the appellant and with Rashid Niaz, Naib Qasid. However, this part of the charge sheet against the Superintendent was not investigated by the IO. Moreover, the role of Naib Qasid was included in this head of the Charge against Imtiaz Ahmed Superintendent but there is no clue in the inquiry report that whether afore-named Naib Qasid was proceeded against or not. (6) In absence of inquiry in respect of the charge sheet against the Superintendent, we are unable to exclude the liability of the Superintendent



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 SWABI

due to his close control over the License Branch being signatory of the licenses and a proxy in between the Branch and the Competent Authority i.e. the Deputy Commissioner. (7) In presence of shortfalls of the inquiry proceedings as deducted from the inquiry for discussion having gone in this judgment, the entire edifice of enquiry proceedings does not qualify the test of the procedure provided under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011; but the competent authority blindly relied upon the inquiry report without prior satisfaction as to its having been conducted in compliance with the said rules. In view of the inferences enumerated herein before, our answer to the formulated questions follows: The first question whether the appellant and the exonerated co-accused were *in paridilicto* meaning "*in equal fault*", is answered in affirmative. The said doctrine of *in paridilicto* is based on the maxim namely "*in pari delicto potior est conditio defendant*" which signifies that in a case of equal or mutual fault, the position of the defending party is the better one. The second question was related to the ground for disciplinary action against the appellant as to its emanating from the affairs of the License Branch of Deputy Commissioner's office in District Swabi, being subject of collective responsibility; if so, whether isolation of the appellant for punishment withstands the test of fairness in such treatment. In view of our observations about charge sheet against the Superintendent, the former part of the second question is answered in affirmative while its latter part about test of fairness is answered in negative. In view of the given answers to the formulated questions, it is safe to hold that Mushtaq Ali the appellant and Mr. Intiaz Ahmed, the Superintendent were supposed to sink together and sail together. However,



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() recommended his exonerated with inquiring to charges against him particularly the charge of his connivance with the appellant. In the purported


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SERVANTS (E&D) RULES, 2011

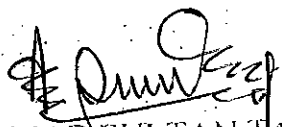
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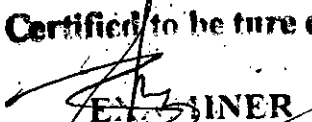
case taken as ground for disciplinary action against the appellant, the trail even goes to the Deputy Commissioner who being at helms of the affair failed to meet the standard of prudence and left the matter at mercy of the Superintendent by delegating him the powers of signatures.

20. In sequel to the details captured herein above, we hereby accept the Appellant's appeal as prayed for. Consequently, the impugned order of appellant's dismissal from service and that of the appellate authority maintaining the same are set aside with direction to the respondents to pass necessary orders to reinstate him in service from the date of his dismissal and to restore him all back benefits which he missed in between the dates of his dismissal and this judgment. This judgment will not be an impediment for the departmental authorities, if they deem it appropriate to hold an all-encompassing inquiry into financial and administrative affairs of the License Branch under control of the Deputy Commissioner, Swabi, for the period of incumbency of Mushtaq Ali the appellant, Mr. Imtiaz Ahmed the then Superintendent and of Mr. Rashid Niaz the then Naib Qasid. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.07.2021


(ROZINA REHMAN)
MEMBER(J)


(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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To,

**SECRETARY BOARD OF REVENUE (R&S)
DEPARTMENT, KHYBER PAKHTUNKHWA
PESHAWAR**

**Subject:- DEPARTMENTAL APPEAL / REPRESENTATION FOR
IMPLEMENTATION OF THE ORDER DATED 16.07.2021
PASSED IN SERVICE APPEAL NO. 387/2019.**

Respected Sir,

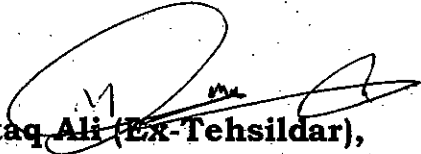
1. That the Appellant is a peaceful and law abiding citizen of Pakistan and is entitled for all the legal and fundamental rights constitution of Islamic Republic of Pakistan 1973.
2. That the appellant was transferred to Mardan Commissioner Office in 1988, when Mardan was raised as Division.
3. That the appellant was promoted as Senior Clerk and then promoted as Assistant BPS-15 in the year 1993.
4. That thereafter, due to his satisfactory Services, the appellant was further promoted as Tehsildar BPS-16 vide Order dated 20.12.2017.
5. That during his service as Tehsildar, the appellant was served with a charge sheet / statement of allegation, which was properly relied by the appellant and denied the allegations leveled against him.
6. That the appellant was not associated with any inquiry proceedings nor any opportunity has been given to appellant for his personal hearing, and thus he was dismissed from service.
7. That thereafter the appellant filed departmental appeal, which was dismissed and later on the appellant filed Service Appeal before the Learned Service Tribunal KPK, Peshawar, which was allowed and the impugned Order of dismissal of the appellant from service and that of the appellate authority maintaining the same are set aside and the your good office was directed to issue reinstatement order of the appellant vide order dated 16.07.2021.


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8. That inspite of order of the Service Tribnal, your good office delayed the matter by one way and another.
9. That the Service Tribunal had been allowed the Service Appeal while setting aside the dismissal order and restored the appellatnt into service with all back benefits, your good office was bound to implement the order of the Hon'ble Service Tribunal in letter and spirit, but your good office issued only reinstatement order and till date no back benefits have been issued, by implementing the order of the Service Tribunal in partial manner.


It is, therefore, most humbly requested that, On acceptance of this Departmental Appeal, the order dated 16.07.2021 may graciously be implemented and the Appellant may please be reinstated / restored into his service with all back benefits.

Dated. 25/11/2023


**Mushtaq Ali (Ex-Tehsildar),
S/o Charagh
R/o Shaheed Abad Shawa
Tehsil Razha, District Swabi.**



26C


	GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT.
021-911276	021-911478
No. Extr./PF/Mushiq Ali/27886	Peshawar Dated the 15/12/2023


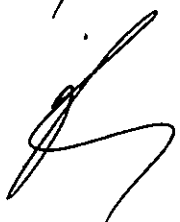
To

Mr. Mushiq Ali
Tehsildar (ACB BS-16).

**SUBJECT: DEPARTMENTAL APPEAL / REPRESENTATION FOR
IMPLEMENTATION OF THE ORDER DATED 16.07.2021 PASSED IN
SERVICE APPEAL NO. 387/2019.**

Reference to the subject noted above and to state that your Departmental Appeal
has been examined and regretted by the Competent Authority.


(NOOR KHAN)
Assistant Secretary (Estt)
Board of Revenue

بغذالت کانسٹریبلوں کے لیے

B. No. 09.2053

0333.9732415

23/02/2023ء منجانب ایسٹ

صفاق علی بنام حکومت

موزخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے لیے سیٹھ صاحب کے نام سے 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 تقریر ثالثتہ 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 و ریس پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا 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 تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو ہمیشہ وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائہ التوائے مقدمہ کے سبب سے ہوگا۔ 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 سندر ہے۔

Accepted

[Signature]

المرقوم 19 باہ اکتوبر 2023ء

العبد گواہ العبد

کے لئے منظور ہے۔

بمقام