


Form- A

FORM OF ORDER SHEET

Court of _____

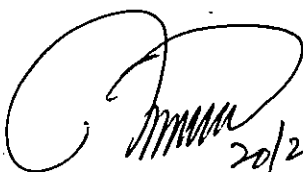
Implementation Petition No. 190/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	27.02.2024	<p>The implementation petition of Mst. Naseem Akhtar received today by registered post through Mr. Hamayun Khan Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on - _____ . Original file be requisitioned. AAG has noted the next date.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

... appeal no.566/2023 received today i.e. on ... by registered post is returned to the counsel for the petitioner with the following remarks:

1. Copy of application moved by the petitioner to competent authority for the implementation of judgment is not attached with the petition. If the application has already been preferred and reasonable period of 30 days has been expired be placed on file. If not, the same process be followed after approach to this Tribunal for the implementation of judgment.
2. Three sets of copies/sets of the memo of petition along annexures i.e. complete in all respect may also be submitted with the petition.

383
20/2


20/2/24
REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

High Court Road.

= Application for implementation filed by petitioner before the respondent No 3 is at page no 19.

= 3 Three copies attached.

Please put before the court for order.



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

E.P No. 190 /2024

IN

Appeal No. 566/2023

Mst. Naseem Akhtar wife of Akhtar Nawaz Ex PHST, resident of Bagh
Near Sub Jail, Tehsil & District Battagram.

...PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa through Elementary & Secondary
Education, Peshawar and others.

...RESPONDENTS

APPLICATION FOR IMPLEMENTATION

INDEX

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3.	Copy of judgment dated 13/12/2023	14-18	"B"
4.	Wakalatnama	20	


...PETITIONER

Dated: 16/2/2024

Through


(HAMAYUN KHAN)

&


(FAZLULLAH KHAN)
Advocates High Court, Abbottabad

1

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

E.P No. 190 /2024

IN

Appeal No. 566/2023

Mst. Naseem Akhtar wife of Akhtar Nawaz Ex PHST, resident of Bagh
Near Sub Jail, Tehsil & District Battagram.

...PETITIONER

**Khyber Pakhtunkhwa
Service Tribunal**

VERSUS

Diary No. 11233

Dated 19-02-2024

1. Government of Khyber Pakhtunkhwa through Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female), Battagram.

...RESPONDENTS

APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 13/12/2023 PASSED BY THIS
HONOURABLE TRIBUNAL IN APPEAL NO.
566/2023 TITLED "MST. NASEEM AKHTAR V/S
GOVT. OF KHYBER PAKHTUNKHWA & OTHERS".

Respectfully Sheweth:-

- 2
1. That petitioner filed service appeal No. 566/2023 against the impugned order dated 05/12/2022 passed by respondent No. 3. Copy of appeal is attached as Annexure "A".
 2. That on 13/12/2023 after hearing of arguments this Honourable tribunal accepted appeal of the appellant and set-aside impugned order dated 05/12/2022. Copy of judgment is attached as annexure "B".
 3. That thereafter, petitioner submitted judgment passed by this Honourable court in the office of respondent No. 3 for implementation.
 4. That after laps of more than 02 months respondents had not implemented judgment dated 13/12/2023 of this Honourable tribunal till date and refuse implement the same.
 5. That respondent No. 3 instead of complying with the direction of this Honourable Tribunal, straightaway refused to comply with the direction of this Honourable Tribunal.

6. That other point would be raised at the time of arguments kind permission of this Honourable Tribunal.


It is therefore, humbly prayed that on acceptance of instant application respondents be kindly be directed forthwith implement the judgment dated 13/12/2023 passed by this Honourable Tribunal in its true letter and spirit



...PETITIONER

Through

Dated: 16/2/2024



(HAMAYUN KHAN)

&



(FAZLULLAH KHAN)

Advocates High Court, Abbottabad

4
ANNEXURE 'A'

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**



Appeal No. SB /2023

Mst. Naseem Akhtar wife of Akhtar Nawaz (Ex. PHSI) resident of
Bagh Near Sub Jail Tehsil & District Battagram.

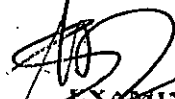
...APPELLANT

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary and Elementary Education Peshawar.
2. Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female) Battagram.

APPEAL UNDER ARTICLE 212 OF
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973 READ WITH SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974, AGAINST
IMPUGNED ORDER DATED 05/12/2022
PASSED BY RESPONDENT NO.3,
WHEREBY RESPONDENT NO.3 REFUSED
BACK BENEFITS OF THE APPELLANT
W.E.F 01.12.2015 TILL 26.06.2019 WHICH
IS ILLEGAL, AGAINST THE LAW, FACTS,

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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NATURAL JUSTICE, INEFFECTIVE UPON
THE RIGHTS OF THE APPELLANT AND
LIABLE TO BE SET-ASIDE.


PRAYER ON ACCEPTANCE OF INSTANT
APPEAL, IMPUGNED ORDER DATED
05.12.2022 PASSED BY RESPONDENT NO. 3
TO THE EXTENT OF BACK BENEFITS, MAY
GRACIOUSLY BE SET-ASIDE AS BEING
ILLEGAL, UNLAWFUL, AB-INITIO, VOID
AND ALL KINDS OF FINANCIAL BACK
BENEFITS, BE GIVEN TO THE APPELLANT
W.E.F 01.12.2015 to 26.06.2019. ANY OTHER
RELIEF WHICH THIS HONOURABLE COURT
DEEMS FIT AND PROPER IN THE
CIRCUMSTANCES OF THE CASE MAY ALSO
BE GRANTED TO THE APPELLANT.

Respectfully Sheweth;

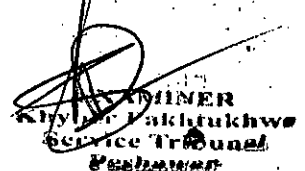
Appellant beg to solicit through instant service appeal on
the following legal and factual grounds;

1. That the appellant was initially appointed as PTC
on 11/01/1995.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. That thereafter, appellant submitted arrival report and thereafter join duty and continuously performed her duty with fully devotion and different schools time by time.
3. That since appointment appellant performed her duties with full devotion and liabilities and there had no complaint in respect of her responsibilities.
4. That on 01/12/2015 competent authority (DEO Female) Battagram issued so called without any justification impugned order whereby appellant was remove from service. Copy of order dated 01.12.2015 is annexed as Annexure "A".
5. That against impugned order dated 01/12/2015 appellant file departmental appeal before your good self.
6. That thereafter appellant preferred appeal No. 378/2016 before the learned Khyber


ATTESTED

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Pakhtunkhwa Service Tribunal against the impugned order dated 01/12/2015.

7. That on 20/12/2018 after hearing of the arguments learned Tribunal Camp Court, Abbottabad accepted appeal of the appellant and set aside impugned order dated 01/12/2015 and appellant was reinstated in service with direction to DEO/ Competent Authority *"The respondents are directed to conduct de-novo inquiry strictly in accordance with law and rules within period of 90 days from the date of receipt of this judgment"*. Copy of judgment is annexed as Annexure "B".
8. That in the consequences of judgment dated 20.12.2018, respondent No.3 issued reinstatement order of the appellant on the same post and posted at the same school (GGPS Joz) from the date of her removal from service i.e 01.12.2015. Copy of reinstatement order is annexed as Annexure "C".

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

9. That, thereafter, appellant joined duty as a reinstated employee.

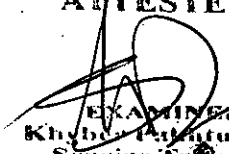
10. That, in the light of judgment passed by learned Tribunal the Competent Authority/respondent No.3 initiated the de-novo inquiry against the appellant. Copies of notifications are annexed as Annexure "D".

11. That, meanwhile appellant preferred application for retirement on medical grounds. Copy of application is annexed as Annexure "E".

12. That on 17/07/2020 DEO/respondent No.3 issued premature retirement order of the appellant. Copy of retirement order is annexed as Annexure "F".

13. That since 20/12/2018 till to stipulated period i.e. 90 days/ April 2019 DEO did not conclude de-novo inquiry, despite the clear direction of the Tribunal.

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

14. That, on 22.12.2021 Inquiry Committee submitted inquiry report before the respondent No.3. Copy of inquiry report is annexed as Annexure "G".

15. That lastly on 05/12/2022 after retirement of two years DEO/respondent No.3 issued impugned Notification in respect of back benefits whereby DEO/respondent No.3 refused back benefits of the appellant. Copy is notification is annexed as Annexure "H".

16. That on 08.12.2022 appellant preferred departmental appeal before the respondent No.2 against the impugned order/notification dated 05.12.2022 passed by DEO/respondent No.3, but till date respondent No.2 did not passed any order on the departmental appeal and similarly not given any response on the same. Copy of departmental appeal is annexed as Annexure "I".

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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17. That, feeling aggrieved from the above said situation, the appellant seek redressal of her grievances on the following grounds; -

GROUNDS; -

- a) That all proceedings conducted by the officers concerned against the law, fact and natural justice.
- b) That the concerned officers ignored the principle of natural justice and procedures prescribed by rules and regulations.
- c) That impugned order is against facts and actual ground realities and similarly officer concerned concealed actual facts.
- d) That the competent authority/ DEO issued the impugned order in respect of back benefits in cursory and haste manner, which is liable to be set-aside.

ATTESTED

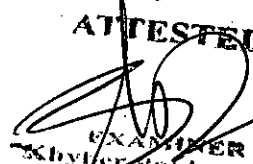
EXAMINER
Kishor Prakashwar
Service Tribunal
Peshawar

e) That the impugned order has been passed without giving opportunity of hearing, therefore, the same is not maintainable in the eye of law.

f) That the impugned order as well as whole proceeding is the result of personal grudges of DEO Female Battagram.

g) That the whole proceeding and Notification dated 05/12/2022 against the direction issued by the learned Service Tribunal in judgment dated 20/12/2018 whereby strictly action for concluding the departmental proceeding/ de-novo inquiry within 90 days, but respondent DEO after 04 years issued impugned Notification which is clear violation of law and direction issued by this Honourable Tribunal.

h) That appellant was retired on 17/07/2020 and after retirement DEO issued impugned Notification lapse of 02 years which is clear

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

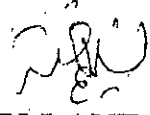
violation of the fundamental rights and natural justice and just to deprived appellant from her lawful financial benefits.

- i) That the whole proceedings were carried out against the rules and procedure, prescribe by E&D Rule.
- j) That Act of the respondents also against well known Principles and Fundamental Rules 54.
- k) That valuable rights of the appellant are involved and all act of the respondents' department against the law, rules, policy and natural justice.
- l) That the other grounds shall be argued at the time of arguments with the kind permission of this Honourable Tribunal.
- m) That the appeal is well within time.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

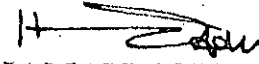
It is therefore most humbly prayed that on acceptance of instant appeal, impugned order dated 05.12.2022 passed by respondent no. 3 to the extent of back benefits, may graciously be set-aside as being illegal, unlawful, ab-initio, void and all kinds of financial back benefits, be given to the appellant w.e.f 01.12.2015 to 26.06.2019. Any other relief which this Honourable court deems fit and proper in the circumstances of the case may also be granted to the appellant.



...APPELLANT

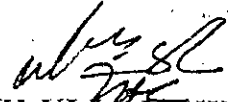
Through

Dated: 10 - 3 /2023



(HAMAYUN KHAN)

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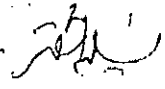


(FAZLULLAH KHAN)

Advocates High Court, Abbottabad.

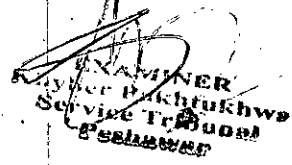
VERIFICATION/ AFFIDAVIT:-

Verified on oath that the contents of forgoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



DEPONENT

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

ANNEXURE "B"

14

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT ABBOTTABAD.**



Service Appeal No. 566/2023

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mst. Naseem Akhtar wife of Akhtar Nawaz (Ex-PHST) Resident of Bagh Near Sub Jail, Tehsil and District Battagram. (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar.
2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Female), Battagram. (Respondents)

Mr. Muhammad Hamayun Khan,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

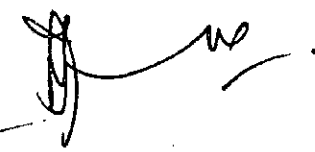
... For respondents

Date of Institution..... 14.03.2023
Date of Hearing..... 13.12.2023
Date of Decision..... 13.12.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 05.12.2022 passed by respondent No. 3, whereby back benefits were refused to the appellant w.e.f. 01.12.2015 till 26.06.2019. It has been prayed that on acceptance of the instant service appeal, the impugned order dated 05.12.2022 might be set aside and the appellant be given back benefits w.e.f. 01.12.2015 to 26.06.2019, alongwith any other remedy which the Tribunal deemed appropriate.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as PTC on 11.01.1995. On 01.12.2015, the DEO (F) Battagram, as competent authority, issued the order of removal from service of the appellant on 01.12.2015. After exhausting departmental remedy, the appellant filed service appeal No. 378/2016, before the Service Tribunal which was accepted vide judgment dated 20.12.2018, the impugned order dated 01.12.2015 was set aside and the appellant was reinstated in service with the direction to the competent authority to conduct denovo inquiry strictly in accordance with law and rules within a period of ninety days from the date of receipt of the judgment. The appellant was reinstated into service and posted at the same school i.e. GGPS Joz from the date of her removal from service. In the light of the judgment, respondent No. 3 initiated denovo proceedings against the appellant which were not concluded within the stipulated period of ninety days. In the meanwhile, she submitted an application for retirement on medical grounds. On 17.07.2020, respondent No. 3 issued premature retirement order of the appellant and she was retired from service w.e.f 01.08.2020. On 22.12.2021, inquiry committee submitted its report on the basis of which back benefits were refused to the appellant, after two years of her retirement. Feeling aggrieved, she preferred departmental appeal on 08.12.2022, before respondent No. 2 but no order was passed on it, hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the

ATTESTED

By
 Name of the Officer
 Service Tribunal
 Battagram

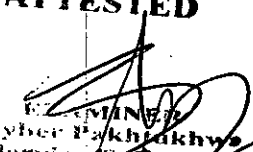
learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

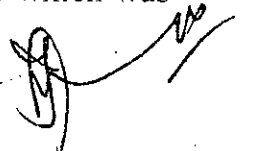
4. Learned counsel for the appellant, after presenting the case in detail, argued that the whole proceedings were against the direction issued by the Service Tribunal in its judgment dated 20.12.2018, wherein the competent authority was directed to conduct and conclude the departmental proceedings within 90 days but the respondents issued the impugned order after four years in clear violation of law and directions of the Tribunal. He further argued that the competent authority issued the impugned order in respect of back benefits of the appellant in a cursory manner and it was liable to be set aside. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that in compliance of the judgment of the Service Tribunal, respondent No. 3 constituted the de-novo inquiry committee several times during 2019, but it was the pandemic era of Covid-19 and due to closure of schools and offices, those inquiries could not be completed. He further argued that the denovo enquiry was conducted and it was recommended that she did not deserve the claimed back benefits. He requested that the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant, while serving as Primary School Teacher, was proceeded against departmentally in 2015 and removed from service. After doing the needful at the departmental level, she preferred a service appeal in 2016 which was


ATTESTED


Attesting Officer
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



accepted by this Tribunal and vide its judgment dated 20.12.2018, respondents were directed to conduct denovo inquiry strictly in accordance with law and rules within a period of ninety days of the receipt of the judgment. The issue of back benefits was made subject to the outcome of the denovo inquiry. In the light of that judgment, the appellant was reinstated in service vide an order dated 26.06.2019. After that the respondents were bound to conduct denovo inquiry within ninety days, but the record presented before us shows that the inquiry proceedings were initiated vide a notification dated 12.06.2019, according to which a committee was constituted for the said purpose. Another notification was issued on 21.08.2019, constituting a committee with a different composition for the same purpose, i.e conducting denovo inquiry. A notification dated 29.08.2019 was issued, available on record, for the denovo inquiry of the appellant, with another composition of the inquiry committee. Another document presented before us shows that one Saira Tabassum, being the inquiry officer, inquiring into the matter of the appellant, submitted her inquiry report bearing diary No. 240 dated 10.06.2020. Finally, another inquiry report dated 22.12.2021 was presented before us, which according to the learned Deputy District Attorney, was the final report based on which impugned order was issued. During this entire process of appointing different inquiry officers/ committees, the appellant submitted an application for pre-mature retirement on medical grounds, which was accepted and she was retired from service with effect from 01.08.2020 vide an order dated 17.07.2020.

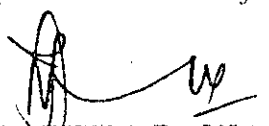
ATTESTED

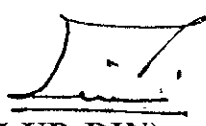

 ATTESTER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

7. From the entire proceedings presented before us, it transpires that the department took three years to implement the judgment of this Tribunal, where it was required to complete the process within ninety days of the receipt of the judgment. It further shows that while conducting the denovo inquiry, the procedure was not fully adopted i.e no charge sheet or statement of allegations was issued to the appellant, neither was she associated with the Inquiry nor was she given any opportunity of personal hearing. It was further noted that when the competent authority retired the appellant during the course of the denovo inquiry, how could they continue the inquiry under the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 when the appellant was no more in government service? When asked to clarify the point, the learned Deputy District Attorney frankly admitted that the competent authority could not do so under the law and rules. This clearly shows that the entire procedure had been conducted in a cursory manner without giving any heed to the law and rules.

8. In view of the above discussion, the service appeal in hand is allowed as prayed for. Cost shall follow the event. Consign.

9. Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 13th of December, 2023.


 (FARZEHA PAUL)
 Member (E)
 Camp Court, Abbottabad


 (SALAH-UD-DIN)
 Member (J)
 Camp Court Abbottabad

Fazle Subhan, P.S.
 Certified to be true copy
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application 19-01-24
 Number of Words page = 15
 Copying Fee 75/-
 Urgent 5/-
 Total 80/-
 Name of Copyiest _____
 Date of Completion of Copy 19-01-24
 Date of Delivery of Copy 19-01-24

محکمات صواب ۵۵ ص ۱۰۰

درخواست عمل درآمد رے مفید
عدالت سرویس ٹریبیونل محمدہ ۱۲/۲۳

صواب عالی

جج نے اپیل نمبر ۵۵۶/۲۳ عدالت سرویس ٹریبیونل
میں دائر کیا، ٹریبلٹ ہے

جج حورم ۲۳-۱۲-۱۳ کو اپیل کو
عدالت نے منظور کیا، مفید ٹ ہے

کامیاب مفید عدالت سرویس ٹریبیونل
پر عمل درآمد فرمائے ہوئے شدہ کو سالیہ
تعمیرات میں ادائگی کا حکم دیا گیا

الدرعز

محکمات صواب ۵۵ ص ۱۰۰ (PHST)
محمدہ ۱۲/۲۳

۱/۲۰۴

وکالت نامہ

کورٹ فیس

BEFORE THE K.P.C. SERVICE TRIBUNAL

مست: Mst NABEEM AKHTAR نام Court of K.P.C.

مخاطب: Petitioner

دعوت مقدمہ: Implementation Petition

باعت تحریر آگے

ATD

مقدمہ مندرجہ میں اپنی طرف سے داسے بیروی و جواب دہی کل کارروائی متعلقہ اس مقام

Hamayun Khan & Fazlillah Khan

کو دیکل مقرر کر کے قرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا نیز دیکل صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف و بیعت الہی اور بیعت دیگر و کری کرنے اجراء اصولی چیک روپیہ و مرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بیعت ضرورت مقدمہ ذکر کی کل یا کسی بیروی کارروائی کے لئے کسی اور دیکل یا مقرر صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر واضح ہو کہ منظور قبول ہوگا۔ دوران مقدمہ جو فرچہ و ہر چاندنہوائے مقدمہ کے سبب ہوگا اس کے مستحق دیکل صاحب ہوں گے۔ نیز ہر پارٹم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو دیکل صاحب موصوف پابند ہوں گے کہ بیروی مقدمہ نہ لوندہ کریں اور اگر مقرر کردہ میں کوئی بیرونی ہو تو دیکل صاحب موصوف مقدمہ کی بیروی کے پابند نہ ہوں گے۔ نیز درخواست براد استیارت نالاش بیعتہ مجلسی کے دائرہ کرنے اور اس کے بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

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