

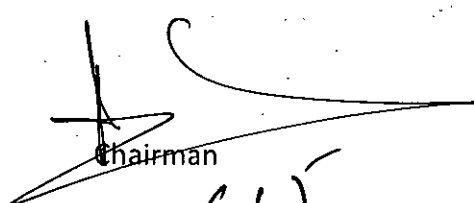
29.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially dismissed from service on 14.10.2014 due to involvement in a criminal case. That he was acquitted of the charged vide order dated 28.10.2014. That the appellant preferred departmental on 11.11.2014 which was accepted by the SMBR vide order dated 12.2.2015 and remitted the case back to authority. That the appellant was again dismissed vide order dated 18.5.2015 regarding which he preferred departmental appeal on 8.6.2015 where-after the instant service appeal was preferred on the same date i.e 8.6.2015.

Learned counsel for the appellant when confronted with maintainability of appeal as the prescribed time of 90 days has not elapsed, he requested for withdrawal of the instant appeal. The same is dismissed as withdrawn with the observations that the appellant may re-agitate his grievances afresh after the decision of the departmental appeal or lapse of prescribed period. File be consigned to the record.

ANNOUNCED

29.6.2015





Chairman

29.06.15

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 615/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08.06.2015	<p>The appeal of Mr. Asfandyar presented today by Mr. Fazal Shah Mohmand Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	9-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>10-6-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	10.06.2015	<p>Counsel for the appellant present. Learned counsel for the appellant requested for adjournment. Adjourned for preliminary hearing to 29.6.2015 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 615 /2015

Asfandyar Khan.....Appellant

VERSUS

Commissioner and Others.....Respondents

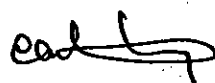
INDEX

S No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-5
2.	Copies of the Orders	A & B	6-8
3.	Copy of FIR	C	9
4.	Copy of Show Cause Notice & Reply	D & E	10-12
5.	Copy of Order dated	F	13-
6.	Copy of Order dated	G	14
7.	Copy of Order & Judgment dated 28-10-2014	H	15
8.	Copy of Departmental appeal & Order dated 12-02-2015	I & J	16-20
9.	Copy of Order dated 18-05-2015	K	22
10.	Wakalat Nama		23

Dated:-03-06-2015


Appellant

Through


Fazal Shah Mohmand
Advocate, Peshawar

OFFICE:-Cantonment Plaza Flat 3/B Khyber Bazar Peshawar.

Cell # 03018804841

①

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Service Appeal No 615 2015

Asfandyar Khan Ex Office Assistant Commissioner Office Mardan Division Mardan
S/O Taj Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and District Mardan.

.....Appellant

V E R S U S

- 1. Commissioner Mardan Division Mardan
- 2. Senior Member Board of Revenue KPK Peshawar.
- 3. Chief Secretary, Govt. of KPK Peshawar.....Respondents

**N.W.F. Province
Service Tribunal
Diary No 653
Dated 08-6-2015**

4/5-47 KPK Service Tribunal Act 1974.

**APPEAL AGAINST THE ORDER 18-05-2015 OF RESPONDENT NO 1,
WHEREBY HE HAS MAINTAINED ORDER DATED 14-10-2014,
WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE.**

PRAYER:-

On acceptance of this appeal the impugned order dated 18-05-2015 and order dated 14-10-2014 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits

Respectfully Submitted:-

- 1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
- 2. That the appellant was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to have attended the office. (Copy of FIR is enclosed as Annexure C).

**Filed to the
Registrar
21/6/15**

3. That the appellant was issued show cause Notice on 19-08-2014, which was replied in detail explaining the true position. **(Copy of show cause Notice and reply are enclosed as Annexure D & E).**

4. That the appellant applied for Bail Before Arrest on 17-09-2014, which was recalled on 13-10-2014. **(Copy of the Order is enclosed as Annexure F).**

5. That finally, the appellant was awarded the penalty of Removal from service by the Commissioner Mardan Division vide Office Order dated 14-10-2014. **(Copy of the Office Order is enclosed as Annexure G).**

6. That finally the appellant was acquitted of the charges by the Court of Competent jurisdiction vide Order and judgment dated 28-10-2014. **(Copy of the Order & Judgment is enclosed as Annexure H).**

7. That after acquittal the appellant filed departmental appeal before respondent No.2 on 11-11-2014, and he vide Order date 12-02-2015, set aside the impugned order dated 14-10-2014, and respondent No 1 was instructed to reconsider the matter and to ascertain whether the procedure set out in Rule 9 had to be followed in the case or not. **(Copy of Departmental appeal & Order dated 12-02-2015 are enclosed as Annexure I & J).**

8. That finally vide Order dated 18-05-2015 respondent No 1, maintained his own Order dated 14-10-2014. **(Copy of the Order is enclosed as Annexure K).**

9. That the impugned Order dated 18-05-2015 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND:-

- A. That the impugned order is illegal and void ab initio.

- B. That the appellant has not been treated according to law and rules and the respondents have badly violated the procedure set forth by the law and rules.
- C. That no charge sheet was communicated to the appellant.
- D. That no inquiry was conducted in the matter to has found out the true facts and circumstances.
- E. That the absence from duty was not willful and deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- F. That the appellant was falsely implicated in a false case, from which he has been acquitted by the Court of Competent jurisdiction, and as such is entitled to be reinstated in service.
- G. That as respondent No 2 had set aside the impugned order dated 14-10-2014, and had remanded the case to respondent No 1 just to ascertain as to whether the procedure set out in Rule 9 of the E & D Rules had to be followed or not, as such the order dated 18-05-2015 amounts to exceeding the authority.
- H. That even otherwise the order date 14-10-2014 of respondent No 1 was set aside by respondent No 2 and he had no authority to maintain an order which was already set aside by the appellate authority, as such the order dated 18-05-2015 is not maintainable in the eyes of law.
- I. That even the respondent No 1 violated the order of respondent No. 2 as after setting aside the impugned order dated 14-10-2014, the appellant was to be reinstated in service but neither the appellant was reinstated in



service nor he spoke a single word about the appellate order which as such is still in field, as respondent No 1 has no authority to set aside the order of appellate authority.

- J. That the appellant did nothing that would amount to misconduct and he has been awarded major penalty in violation of law, rules and dictums of the superior Courts.
- K. That the impugned order is defective and as such not maintainable in the eyes of law.
- L. That the impugned order is not a speaking order and thus liable to be set aside.
- M. That the appellant was not afforded the opportunity of personal hearing.
- N. That the appellant has more than 5 years of service with unblemished service record.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Any other relief not specifically asked for and deemed appropriate may also be granted in favor of the appellant.

Dated:-03-06-2015.


Appellant
Through 
Fazal Shah Mohmand
Advocate Peshawar.

5

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2015

Asfandyar Khan.....Appellant

VERSUS

Commissioner and Others.....Respondents

AFFIDAVIT

I, Asfandyar Khan Ex Office Assistant
Commissioner Office Mardan Division Mardan S/O Taj
Muhammad R/O Khazana Dheri, P/O Khanjar Tehsil and
District Mardan., do hereby solemnly affirm and declare on
oath that the contents of this **Appeal** are true and correct to
the best of my knowledge and belief and nothing has been
concealed from this honorable Tribunal.

Asfandyar Khan

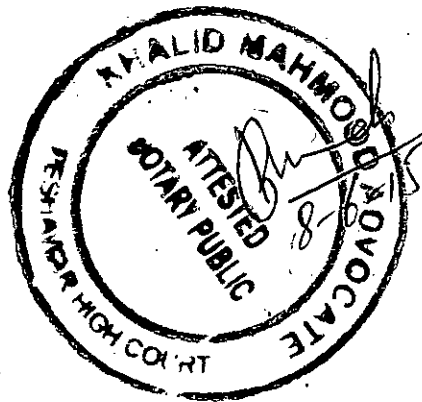
DEPONENT

Identified by

Fazal Shah Mohmand

Fazal Shah Mohmand

Advocate Peshawar





COMMISSIONER
PESHAWAR DIVISION PESHAWAR

12th the Mall Peshawar Cantt (tel.9211334 fax 9214055)

Dated Peshawar the 2nd Jan: 2009

6 A

OFFICE ORDER.

No.PS/Commr/Pesh/1-2/2008/

On the recommendation of Departmental Selection Committee Mr. Asfandyar Khan S/O Taj Muhammad r/o Village Khazana Dheri, P.O. Khanajar Tehsil & District Mardan is hereby appointed as Assistant (BPS-14) on temporary basis on usual pay and allowances admissible under the rules against the vacant post subject to the terms & conditions mentioned below:-

TERMS AND CONDITIONS.

1. He will get pay at minimum of BPS-14 (Rs.4920-380-16320) including usual allowances as admissible under the rules. He will also be entitled to annual increment as per existing policy.
2. He will produce medical fitness certificates from Medical Superintendent, Services Hospital Peshawar.
3. He will be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
4. He will, for all intents and purposes, be Civil Servant except pension/commutation/gratuity. In lieu of pension and gratuity, he will be entitled to receive such an amount contributed by him towards Community Provident Fund (CPF) alongwith contributions made by Govt. to his account in the said fund, in the prescribed manner.
5. His employment in the office of Commissioner Peshawar is purely on temporary basis and his services will be liable to terminate at any time without assigning any reason before the expiry of the period of probation/extended period of probation. If his work during this period was not found satisfactory in such an event, he will be given a month's notice of termination from service or one month pay in lieu thereof. In case he wishes to resign at any time a month's notice shall be necessary or in lieu thereof one month pay shall be forfeited.
6. He shall initially be on probation for a period of two years extendible upto 3 years.
7. If the above terms & conditions are accepted to him, he should report to the office of Commissioner Peshawar Division Peshawar on or before 16.01.2009, failing to which the order of appointment shall stand null and void.
8. His services are transferable anywhere in the Divisional level.

-Sd-

COMMISSIONER PESHAWAR

Dated 02/01/2009

Endst: No.PS/Commr/Peshawar/1-2/2008./21

Copy forwarded to:-

1. The Senior Member Board of Revenue NWFP, Peshawar
2. The Accountant General NWFP, Peshawar.
3. The District Coordination Officer, Peshawar.
4. The Section Officer (FATA), Home & TAs Department.
5. The Assistant to Commissioner (P/D), Peshawar.
6. The Budget Assistant O/O Commissioner, Peshawar.
7. Mr. Asfandyar Khan S/O Taj Muhammad r/o Village Khazana Dheri, P.O. Khanajar Tehsil & District Mardan
8. Personal file/office order file.

Attested
Rahat
A.A.

(MUNTAZIR KHAN)
Assistant to Commissioner (Revenue)

To,

7

B

The Commissioner Peshawar Division,
Peshawar.

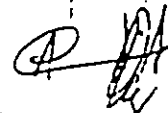
Subject : ARRIVAL REPORT.

Sir,

In compliance of Office Order No. PS/Commr/Pesh/1-
2/2008/21 dated 02.01.2009, I hereby submit my arrival report for duty
today on 06.01.2009 (F.N).


Thanks.

Yours Obediently,



(Asfandyar Khan)
Assistant.

Attest



OFFICE OF THE COMMISSIONER MARDAN DIVISION, MARDAN.

OFFICE ORDER

Consequent upon completion of probation period of two years w.e.f. 06-01-2009 to 05-01-2011, services of the following officials are hereby regularized on permanent basis.

S.No	Name of Official	Designation
✓ 1.	Mr. Asfandiyar Khan	Assistant (BPS-14)
2.	Mr. Umair Khan	Assistant (BPS-14)
3.	Mr. Waqas Ahamd	Junior Clerk (BPS-07)
4.	Mr. Muhammad Jalil	Naib Qasid (BPS-01)
5.	Mr. Muhammad Zubair	Mali (BPS-01)

Commissioner,
Mardan Division, Mardan.

Dated Mardan the 27/01/2011

NO. 289-96 /ACR (M)

Copy forwarded to the:-

- 1- District Accounts Officer, Mardan.
- 2- PS to Commissioner Mardan Division, Mardan.
- 3- Finance Assistant (Local).
- ✓ 4- Officials concerned.

Assistant to Commissioner (Rev),
Mardan Division, Mardan.

Atested

ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قاتل دست اندازی پوسٹر رپورٹ نمبر 157 مجموعہ ضابطہ جدارن

صدر

DEFENCE

صدر

2	لاہور	55/57	درجہ	55/57	45-45	55/57
		55/57	درجہ	55/57	40-40	55/57
		55/57	درجہ	55/57	302/324/34	55/57
		55/57	درجہ	55/57		55/57
		55/57	درجہ	55/57		55/57
		55/57	درجہ	55/57		55/57

ابتدائی اطلاع کے درج کردہ۔ رپورٹ صدر ایک شہریوں کے
 تاج احمد عرف 114 کی پوجی عدالت دران ترقی کے سیکل 5545 موهراں پور خوں کے
 عدالت 5115 سے قاتل صدر حضان ، عبدالواحد ولد عبدالرشد محم آفسان لہر 56 سال
 کن خزانہ ڈھری نے نقشہ بقیہ آف عبدالودود ولد عبدالرازق لہر قریب 67 سال
 ضلع طنلم نیر 81 سال حدینہ دختر جہر الورج اعداد اہلبیان رشتہ داران آفس
 جی ایچ سہال دران لا کریوں رپورٹ کرتا ہے کہ سید حامی عبدالرشد میں حشری کہہ کہ
 نام کرنے میں مصروف تھے کے اجازت عبدالودود ولد عبدالرازق اور اسفندیار ولد
 تاج جہر کے مابین ترقی تکرار ہوئی۔ اسفندیار بدھا گھر خود کار فتح و مکار تکرار
 سے نہ تھیں ولد عبدالکرخان ساکنان رشہ ام اگر یہ کہم بقیہ ام عبدالودود اور مکار تکرار
 سے بہ راہ قتل مکار تکرار شرح کشیں۔ میں سے بقیہ ام عبدالودود رگ کہ
 دفعہ ایک سال بحق بیواہ جبکہ طنلم حدینہ لگا کر زخمی ہوئے وہاں پر تھیں
 رضی سے راجع ہوا حدینہ عدالوی ولد عبدالرازق کا سجدہ ہے۔ وہم غناہ
 دفعہ تکرار ہے۔ میں بقیہ ام عبدالودود کا قتل اور طنلم حدینہ کی مصروفیت کا
 ہر فلورٹ مہرمان تکرار ۱۰ ماہ حشری لہر لہر۔ جہر الورج ولد لہر علی قح آفسان
 لہر کی سال ساکن خزانہ ڈھری نے رفرین ماہ کا نام لگا اسم مکار تکرار تکرار
 صد گنتہ سائل رپورٹ درج ہو کر پھر سنایا گیا۔ دران لہر کی لہر اور رپورٹ
 خود جبکہ نام لہر نے ماریوں الیہات نسبت کے۔ جبکہ سیکل 5545

ابتدائی اعلیٰ درجہ

شمالی مرقان

تھانہ صدر
مکتبہ نمبر 62

تاریخ 25-5-2012 وقت 9.45 ص

1- تاریخ مکتبہ 25-5-2012 وقت 6-40 بجے طالبان کے ساتھ 5-5-2012 وقت 11-20 بجے

2- نام دستکوت اعلیٰ - عبدالواحد ولد عبدالرشید رحمہ اللہ اطفال نمبر 56 سال
مشغول و غیر مشغول گھر میں

APC 302/324/34

3- مکتبہ اعلیٰ تھانہ صدر میں لکھنے کی تعلیم دینا اور مسجد جامعہ عبدالرشید
میں قرائت کرنا اور قرآن مجید پڑھنا اور اللہ جل جلالہ سے دعا ہے کہ

4- نام دستکوت اعلیٰ - اسفندیار ولد محمد علی صاحب صاحب
مکتبہ اعلیٰ تھانہ صدر میں لکھنے کی تعلیم دینا اور اللہ جل جلالہ سے دعا ہے کہ

5- نام دستکوت اعلیٰ - اسفندیار ولد محمد علی صاحب صاحب
مکتبہ اعلیٰ تھانہ صدر میں لکھنے کی تعلیم دینا اور اللہ جل جلالہ سے دعا ہے کہ

محمد عارف 117C کیولی تحصیل مردان بستی کبیر پش 254 مجموعی نمبر 2005
26/26 سال قریب صنف کبیر 117C کیولی تحصیل مردان بستی کبیر پش 2005
میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005

میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005
میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005
میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005

میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005
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میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005
میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005
میر عبدالرشید صاحب کیولی تحصیل مردان بستی کبیر پش 2005

تاریخ و مضافاً

تاریخ و مضافاً
تاریخ و مضافاً

تاریخ و مضافاً

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تاریخ و مضافاً

مفتوحہ کمانڈ کے تحت، حکومت نے لکھنؤ میں ایک
 لکھنؤ میں ایک، دہلی میں ایک، بمبئی میں ایک اور
 گجرات میں ایک ایسے ہی ایجنسیوں کے تحت زیر
 قیادت کے تحت، 12300 اور 12300 ایجنسیوں کے تحت
 صورت میں جو ملک بھر میں پھیل رہی ہیں۔
 اس کے تحت، لکھنؤ میں ایک، دہلی میں ایک اور
 گجرات میں ایک ایسے ہی ایجنسیوں کے تحت
 صورت میں جو ملک بھر میں پھیل رہی ہیں۔
 اس کے تحت، لکھنؤ میں ایک، دہلی میں ایک اور
 گجرات میں ایک ایسے ہی ایجنسیوں کے تحت
 صورت میں جو ملک بھر میں پھیل رہی ہیں۔
 اس کے تحت، لکھنؤ میں ایک، دہلی میں ایک اور
 گجرات میں ایک ایسے ہی ایجنسیوں کے تحت
 صورت میں جو ملک بھر میں پھیل رہی ہیں۔
 اس کے تحت، لکھنؤ میں ایک، دہلی میں ایک اور
 گجرات میں ایک ایسے ہی ایجنسیوں کے تحت
 صورت میں جو ملک بھر میں پھیل رہی ہیں۔

MA Sir G. Sudder

 2012

 Attest

A Hester

 Adus

بسم الله الرحمن الرحيم

٢

بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين
الذين هم خير البرية
والذين هم خير النعمان
والذين هم خير المبعوثين
والذين هم خير المرسلين
والذين هم خير القادة
والذين هم خير الولاة
والذين هم خير الخلفاء
والذين هم خير الأئمة
والذين هم خير الحكماء
والذين هم خير المشايخ
والذين هم خير العلماء
والذين هم خير الصالحين
والذين هم خير السالكين
والذين هم خير العارفين
والذين هم خير الموحدين
والذين هم خير المؤمنين
والذين هم خير الصابرين
والذين هم خير الصائمين
والذين هم خير الساجدين
والذين هم خير القانتين
والذين هم خير الزاهدين
والذين هم خير الورع
والذين هم خير المتقين
والذين هم خير العابدين
والذين هم خير العارفين
والذين هم خير السالكين
والذين هم خير العارفين
والذين هم خير الموحدين
والذين هم خير المؤمنين
والذين هم خير الصابرين
والذين هم خير الصائمين
والذين هم خير الساجدين
والذين هم خير القانتين
والذين هم خير الزاهدين
والذين هم خير الورع
والذين هم خير المتقين
والذين هم خير العابدين
والذين هم خير العارفين

بسم الله الرحمن الرحيم
الحمد لله رب العالمين
والصلاة والسلام على
سيدنا محمد وآله الطيبين
الطاهرين
الذين هم خير البرية
والذين هم خير النعمان
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بسم الله الرحمن الرحيم



OFFICE OF THE COMMISSIONER MARDAN DIVISION MARDAN

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SHOW CAUSE NOTICE

Mr. Khalid Hussain, Commissioner Mardan Division Mardan, as competent authority, under the Khyber Pakhtunkhwa Govt Servants (Efficiency & Discipline) rules, 2011, do hereby serve you, Mr. Asfandiyar Khan, Office Assistant, as follows:

1. Whereas, you willfully remained absent from your official duties since 05-02-2012 without any leave/permission:

Therefore I am satisfied that you are habitual absentee from official duty which falls within the preview of "Misconduct".

2. As a result thereof, I as competent authority, have tentatively decided to impose upon you major penalty under rule-IV of the said rules.
3. you are thereof, required to immediately attend the office and to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within 10 days, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

(KHALID HUSSAIN)
COMMISSIONER
MARDAN DIVISION MARDAN

CC:

PS to Commissioner Mardan Division Mardan.

Official Concerned

Assistant to Commissioner (Rev.)
Mardan Division Mardan.

No. 2031 / MCR / BA

Date: 17-8-2014

Attested

Asfandiyar Khan

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To

The Honourable Commissioner,
Mardan Division,
Mardan.

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WRITTEN REPLY OF THE SHOW CAUSE
NOTICE ISSUED ON DATED 19-8-2014

R/Sir,

The para wise reply are as follows.

1. I have never wilfully remained absent from my official duty, but in fact unluckily I am falsely implicated in murder case vide FIR NO 62 dt 5-2-12 due to our village fraction by our opponents (copy of the FIR is attached) more over I am highly committed, dedicated and faithful to my duty / performances.

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25/8.

2. That your honour, is a competent authority but your honour would have also look at the circumstances for which I am suffering because

Attested

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my opponents/enemies like a thirsty hounds are behind me to engulf me

3. That I promised with your honor that I will at once appear for my duties on my release in the above referred case by competent court of law.

Therefore it is respectfully prayed that the period of my absence may kindly be considered as a leave for the petitioner.

Note:- I hope that keeping in view my prevailing circumstance, your honor will dropped further proceeding.

Dated. 23-08-14

Submitted by

A Spandya Khan

Through Uncle

Said Rehman

Attested

 Ad.

Accused/petitioner on ad interim bail present: Counsel for accused/petitioner, counsel for complainant and Dy PP for the state present. Arguments heard and record perused.

Accused/petitioner Asfandiar, son of Taj Muhammad, No Khazana Dheri, District Mardan seeks confirmation of pre-arrest bail in case FIR No.62 dated 05.02.2012 under sections 302/324/34 PPC of police station Saddar, Mardan, already extended to the petitioner vide order dated 17.09.2014.

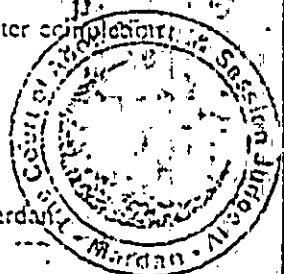
Brief facts of the case are that Abdul Wahid son of Abdur Rasheed brought the dead body of his nephew Abdul Wadood and also brought injured child namely Madina with the help of co-villagers and relatives to the casualty hospital Mardan and reported the matter to the effect that on 05.02.2012 he was busy at work as labor with mason in the mosque of Haji Abdur Rasheed, when suddenly Abdul Wadood son of Abdur Raziq and Asfandiar son of Taj Muhammad/accused petitioner had exchange hot words with each other. On this, accused/petitioner straightaway went to his house and came back armed with Kalashinkove along with co-accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashinkove in order to commit his Qatl-i-Amd with their firing, his nephew got hit and died, while a child namely Madina, who was playing near to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal son of Abdur Raziq. Motive was verbal altercation, as mentioned above. He charged the accused for the commission of Qatl-i-Amd of his nephew and injuring minor child Madina. His report was recorded in the shape of murasila and on the basis of which the subject FIR was registered.

Perusal of the record reveals that no malafide on the part of the complainant or prosecution has been established on record and there is no evidence on record which may reveals the false implication of the accused/petitioner. No exceptional ground exist to grant extra-ordinary relief of ad interim pre-arrest bail at this stage, as such, the BBA of the accused/petitioner is not arguable for the purpose of bail, hence the same is dismissed and the ad interim pre-arrest bail already granted to accused/petitioner vide order dated 17.09.2014 is hereby recalled.

Requisitioned record be sent forthwith to quarter concerned and file of this court be consigned to record room after completion and compilation.

Announced
13.10.2014

(Miss Amreen Naved)
Additional Sessis Judge-IV, Mardan




16/10/14
16/10/14
16-10-14
OSP
16-10-14

ADDITIONAL SESSIONS JUDGE IV MARDAN

No. of Order or Proceedings: _____ Date of Order or Proceedings: _____ Order or other proceedings with signature of Judge or Magistrate and date of filing where necessary: _____

Or-1
17.09.2014



BBA petition submitted by counsel for petitioner. Accused/petitioner: Asfandiar son of Taj Muhammad r/o Khazana Dheri Mardan along with his counsel present.

Petitioner seeks his pre-arrest bail in case FIR No. 62 dated 05.02.2014 under sections 302/324/34 PPC of police station Saddar, Mardan.

Content: malafide and false implication. The application is supported by affidavit. In the absence of record, petitioner is admitted to ad-interim pre-arrest bail in the sum of Rs. 100,000/- with two sureties each in the like amount to the satisfaction of this court.

Petitioner is directed to join investigation before date fixed. Notice and record for 24/9/2014.

[Signature]
Miss Ambareen Navid
Additional Sessions Judge IV, Mardan

2. 24/9/14

Accd-Petitioner on ad interim bail present. SPP present. Complt in person present. Put up for arguments on 1.10.14.

[Signature]
ASJ, IV, Mardan.

3. 1.10.14

Accd-Petitioner on ad interim bail present. SPP present. Complainant present. Record received. Complt requested for adjournment to engage counsel. Put up for arguments on 09/10/14.

[Signature]
ASJ, IV, Mardan.

EXAMINED
Sitting Sessions Judge
Sessions Court Mardan

09.10.2014

Accused/petr. on ad interim bail present. Complainant along with counsel present. Counsel for the complainant submitted v. nama and requested for adjournment which is allowed. Put up for arguments on 13.10.2014.

[Signature]

Accused/petitioner on ad interim bail presence. Counsel for accused/petitioner, counsel for complainant and Dy: PP for the state present. Arguments heard and record perused.

Accused/Petitioner Afsandyar son of Taj Muhammad r/o Khazama Dheri, District Mardan seeks confirmation of pre-arrest bail in case FIR No. 62 dated 05.02.2012 under sections 302/324/34 PPC of police station Saddar, Mardan already extended to the petitioner vide order dated 17.09.2014.

Brief facts of the case are that Abdul Wahid son of Abdur Rasheed brought the dead body of his nephew. Abdul Wadood and also brought injured child namely Madima, with the help of co-villagers and relatives in the casualty hospital Mardan and reported the matter to the effect that on 05.02.2012 he was busy in work as the matter to the effect that on 05-02.2012 he was busy in work with labour with mason in the mosque of Haji Abdur Rasheed when suddenly Abdul Wadood Abdur Razia and Asfand Yar son of Taj Muhammad accused petitioner had exchanged hot words with each other, On the accused/petitioner straight away went to his house and came back armed with Kalanshinkove along with co-accused Niaz Ali and started firing at his nephew. Abdul Wadood with Kalashinkove in order to commit his Qatl-i-Amd with their firing, his nephew got hit and died, while a child namely Madima who was playing near to the spot had also received Occurrence was witnessed besides him by one Abdul Awal son of Abdur Raziq was verba alteration, as mentioned above, charged the accused for the commission of Qatl-Amd of nephew and injuring minor child Madima. His report was recorded the shape of murasila and on the basis of which the subject FIR was registered.

Perusal of the record reveals that no malafide on the part of the complainant or prosecution has been established on record and there is no evidence on record which may reveal the falsely implication of the accused/petitioner. No exceptional ground exist to great extra-ordinary relief of ad interim pre-arrest bail at this stage, as such the BBA of the accused/petitioner is not arguable for the purpose of bail, hence the same is dismissed and the ad interim pre-arrest

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bail already granted to accused/petitioner vide order dated 17.09.2014 is hereby recalled.

Requisitioned record be forthwith to quarter concerned and file of this court be consigned record room after complete and compilation

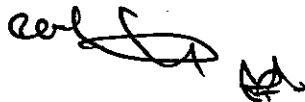
Announced

15-10-2014

(Miss Ambreen Navid)

Additional Sessions Judge-IV, Mardan.

Attested





OFFICE OF THE COMMISSIONER MARDAN DIVISION MARDAN

Attention
Fazal Shah Mahirand
Cell: 0301-8804841.

OFFICE ORDER

No. 2292 /ACR/EA/2-1

Dated Mardan the: 16/10-2014

1. Whereas you Mr. Asfandiyar Khan, Office Assistant have remained willfully absent from duty since 05-02-2012, without any leave/permission. Which falls within the preview of misconduct
2. Whereas a show cause notice was issued to you to resume the duty and you were directed to appear in person for personal hearing to which you submitted a reply through a representative and not even bothered to appear in person.
3. Whereas it was disclosed to this office through local police vide letter No. 417/GB dated 10.2.2012 that F.I.R No.62 dated 05.02.2012 u/s 302/324/34 have been lodged against you and you have reported through police vide letter No.4687/GB dated 15.9.2014 to have absconded yourself from legal action/arrest and have not yet surrendered.
4. Whereas you have concealed aforesaid facts from this office which is a misconduct on your part.
5. Whereas you could not give any cogent and convincing reason in your reply for your willfull absence for more than two & half years.
6. Consequent upon the aforementioned facts; the undersigned being competent authority is pleased to impose upon you Mr. Asfandiyar Khan, Office Assistant **Major penalty of Removal from Service** under Khyber Pakhtunkhwa Efficiency & Discipline Rules, 2011.

Attested

Adn

(Khalid Hussain)
Commissioner
Mardan Division Mardan
(Competent Authority)

Copy forwarded to:

- 1- Secretary-I, Board of Revenue, Govt of Khyber Pakhtunkhwa, Peshawar.
- 2- Deputy Commissioner Mardan.
- 3- Deputy Commissioner Swabi.
- 4- District Comptroller of Accounts, Mardan.
- 5- PS to Commissioner Mardan Division Mardan.
- 6- Finance Assistant (local).
- 7- Official concerned.

(Qaisar Khan)
13-10-14.

Assistant to Commissioner (Rev)
Mardan Division Mardan

Dr-40
28.10.2014



Handwritten notes in Urdu at the top of the page, including a date '05/11/14' and other illegible text.

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Accused Niaz Ali present on bail and accused Asfandiar produced in custody. Supplementary challan of accused Asfandiar received, placed on file.

Arguments on application under section 265-K Cr.P.C heard and record perused.

Brief facts of the case are that Abdul Wahid son of Abdul Rashid brought the dead body of his nephew Abdul Wadood and also brought injured child namely Madina, with the help of co-villagers and relatives to the casualty hospital Mardian and reported the matter to the effect that on 05.02.2012 he was busy in work as labor with mason in the mosque of Haji Abdul Rasheed, when suddenly Abdul Wadood son of Abdur Raziq and Asfandiar son of Taj Muhammad had exchange hot words with each other. On this, Asfandiar straight away went to his house and came back armed with Kalashinkove along with co-accused Niaz Ali and started firing at his nephew Abdul Wadood with Kalashinkove in order to commit his Qalt-i-Amd with their firing, his nephew got hit and died, while, a child namely Madina, who was playing near to the spot had also received injuries. Occurrence was witnessed besides him by one Abdul Awal son of Abdur Raziq. Motive was verbal altercation, as mentioned above. He charged the accused for the commission of Qatl-i-Amd of his nephew and injuring minor child Madina. His report was recorded in the shape of 'murasila and on the basis of which the subject FIR was registered.

Perusal of the record reveals that the complainant of the present case recorded his statement as PW-2 and admitted in his cross examination that on same date and time a cross case was also registered against them by Azimullah. He further stated that it was indiscriminate firing and he was present inside the mosque and had not seen as to who were firing from which side, as all of the assailants of both the parties were firing from upper storey of their house and he has not seen them. He also admitted that he does not want to prosecute the accused in instant case and do not charge them and has no objection on their acquittal.

Counsel for complainant abandoned PW Adul Awal to the effect that nowadays he is in Dubai and as disclosed to him by Abdur Raziq father of deceased that he is also not interested in the case.

So keeping in view the data available on record and statement of complainant/PW-2. there is no probability of the

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Certified to be True Copy

EXAMINER
Copying Department
Sessions Court Mandana

accused facing trial to be convicted even if the remaining evidence of the prosecution is recorded; hence by accepting the application under section 265-K Cr.P.C accused facing trial are acquitted of the charge leveled against them. Accused Asfandiar is in jail, be released forthwith if not required in any other case, whereas accused Niaz Ali is are on bail, his bail bonds stand cancelled and his sureties are absolved accordingly from the liability of his bail bonds.

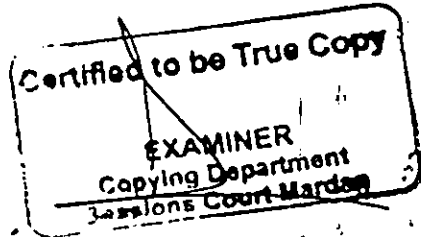
Case property be disposed of in accordance with law after expiry of period of appeal/revision.

File be consigned to record room after completion and compilation.

Announced
28.10.2014



(Miss Ambareen Navid)
Additional Sessions Judge-IV, Mardan



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No: 12742 Dt: 30-10-14.

Date of Preparation: 05-11-14

Date on which copy prepared: 05-11-14

Date on which copy Examined: 05-11-14

No. of words: 02P

Court fee stamps: _____

urgent fee: _____

Signed of Copyist: *[Signature]*

05-11-14

05/11/14

BEFORE THE SENIOR MEMBER BOARD OF REVENUE KPK PESHAWAR.

Subject:- Departmental Appeal against the Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, whereby the appellant has been removed from service.

Respectfull y Submitted:-

1. That the appellant was appointed as Assistant BPS-14, by the Commissioner Peshawar, vide Order dated 02-01-2009, he submitted Arrival, was transferred to Commissioner office Mardan and upon completion of probation period, his services were regularized vide Office Order dated 27-01-2011. (Copies of the Orders are enclosed as Annexure A & B).
2. That the appellant and was falsely implicated in a false murder case vide FIR No 62 dated 05-02-2012 of Police Station Saddar Mardan, and as such was unable to had attended the office. (Copy of FIR is enclosed as Annexure C).
3. That the appellant was issued show cause Notice on 19-08-2014, which was replied in detail explaining the true position. (Copy of show cause Notice and reply are enclosed as Annexure D & E).
4. That the appellant applied for Bail Before Arrest on 17-09-2014, which was recalled on 13-10-2014. (Copy of the Order is enclosed as Annexure F).
5. That finally, the appellant was awarded the penalty of Removal from service by the Commissioner Mardan Division vide Office Order dated 14-10-2014. (Copy of the Office Order is enclosed as Annexure G).
6. That finally the appellant was acquitted of the charges by the Court of Competent jurisdiction vide Order and judgment dated 28-10-2014. (Copy of the Order & Judgment is enclosed as Annexure H).

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7. That the impugned Order dated 14-10-2014 of the Commissioner Mardan Division Mardan is against the law, facts and principles of justice on grounds interalia as follows:-

GROUNDS:-

- A. That the impugned order is illegal and void ab initio.
- B. That no charge sheet was communicated to the appellant.
- C. That no inquiry was conducted in the matter to has found out the true facts and circumstances.
- D. That the absence from duty was not willful and deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- E. That the appellant was falsely implicated in a false case, from which he has been acquitted by the Court of Competent jurisdiction, and as such is entitled to be reinstated in service.
- F. That the appellant did nothing that could amount to misconduct.
- G. That the impugned order is defective and as such not maintainable in the eyes of law.
- H. That the appellant was not afforded the opportunity of personal hearing.

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I. That the appellant has more than 5 years of service with unblemished service record.

It is therefore prayed that on acceptance of this appeal, the impugned Order dated 14-10-2014, of the Commissioner Mardan Division Mardan, may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

ADD

Dated:-11-11-2014.

11/11/2014
Asfandyar Khan Ex Office Assistant
Commissioner Office Mardan Division
Mardan S/O Taj Muhammad R/O
Khazana Dheri, P/O Khanjar Tehsil
and District Mardan.
CELL#0315 6086222

OK

Dy No 6459/PS/3MBA

Date 11-11-2014

Attested

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BEFORE THE SENIOR MEMBER BOARD OF REVENUE
KHYBER PAKHTUNKHWA

Afsandiyar Khan ex Assistant Commissioner Office Mardan
Vs.... Commissioner Mardan Service Appeal
No. 16/204.

ORDER.

Afsandiyar Khan has assailed the order of Commissioner Mardan Division passed on October 14, 2014 vide which his services were terminated for willful absence of two and half years. On receipt of appeal, Commissioner Mardan was asked to furnish comments which were provided on 27-11-20014 where after the appellant and representative of Commissioner Mardan were heard at length. Brief facts of the case are and representative of Commissioner heard at length.

Brief facts of the case are that an FIR for murder was registered against the appellant on February 2, 2012 where after he absconded to evade arrest, resultantly he avoided attending office. When attending office. When the matter of registration of FIR came to the knowledge of Commissioner Mardan, he placed the appellant under suspension and ordered a fact finding enquiry. The enquiry officer reported that the enquiry cannot be completed as the appellant is absconding and not attending the proceedings. The appellant was charge sheeted for willful absence, by the time the E&D proceedings were underway, the appellant secured bail and appeared for personal hearing. The Commissioner after perusal of the enquiry report and hearing the appellant in person reached the conclusion that the appellant had withfully absenced from duty as he made no effort to explain his inability to attend office and obtain have and imposed major penalty of removal from service.

The appellant narrated the facts from registration of FIR to his release on bail, and stated that had he attended office he would have been arrested for an offence for he had not committed. Therefore he had no alternate but to obtain from resuming duty. The Authorized Officer had not considered his difficulty while deciding the matter. He further drew attention to provisions of Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 which prescribes the procedure that needs to be adopted in case of willfull absence.

Attested
[Signature]

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The record presented by the representation of Commissioner Office does not speak of having sent notice of absence and direction to the appellant to resume duty within 15 days nor were cuttings from two newspapers provided a show that the subsequent notice had been published. It is also not clear at what stage the appellant joined the E&D proceedings.

In the circumstances the impugned order is not aside and Commissioner Mardan is instructed to reconsider the matter ascertain whether the procedure set out in Rule 9 had to be followed in the present case or not.

Senior Member

Announced

12-02-2015.

Attested

Ref [Signature]

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BEFORE THE SENIOR MEMBER BOARD OF REVENUE
KHYBER PAKHTUNKHWA

Asfandiyar Khan ex Assistant Commissioner Office Mardan Vs Commissioner Mardan
Service Appeal #16/2014

ORDER

Asfandiyar Khan has assailed the order of Commissioner Mardan Division passed on October 14, 2014 vide which his services were terminated for willful absence of two and half years. On receipt of appeal, Commissioner Mardan was asked to furnish comments which were provided on 27-11-2014 where after the appellant and representative of Commissioner Mardan were heard at length.

Brief facts of the case are that an FIR for murder was registered against the appellant on February 2, 2012 where after he absconded to evade arrest; resultantly he avoided attending office. When the matter of registration of FIR came to the knowledge of Commissioner Mardan, he placed the appellant under suspension and ordered a fact finding enquiry. The enquiry officer reported that the enquiry cannot be completed as the appellant is absconding and not attending the proceedings. The appellant was charge sheeted for willful absence; by the time the E&D proceedings were underway, the appellant secured bail and appeared for personal hearing. The Commissioner after perusal of the enquiry report and hearing the appellant in person reached the conclusion that the appellant had willfully absented from duty as he made no effort to explain his inability to attend office and obtain leave, and imposed major penalty of removal from service.

The appellant narrated the facts from registration of FIR to his release on bail, and stated that had he attended office he would have been arrested for an offence he had not committed. Therefore he had no alternate but to abstain from resuming duty. The Authorized Officer had not considered his difficulty while deciding the matter. He further drew attention to provisions of Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 which prescribes the procedure that needs to be adopted in case of willful absence.

The record presented by the representative of Commissioner Office does not speak of having sent notice of absence and direction to the appellant to resume duty within 15 days nor were cuttings from two newspapers provided to show that the subsequent notice had been published. It is also not clear at what stage the appellant joined the E&D proceedings.

In the circumstances the impugned order is set aside and Commissioner Mardan is instructed to reconsider the matter and to ascertain whether the procedure set out in Rule 9 had to be followed in the present case or not.

M. Noor

Senior Member

Announced
12-02-2015

Attested

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Handwritten notes and dates at the top of the page, including "18/05/15" and "03/03/15".



IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

K

Asfandiar Khan

Appellant

Versus

Commissioner Mardan Division Mardan

Respondent

Case No.....
Dated of institution: 03/03/2015
Dated of Decision: 18/05/2015

**DEPARTMENTAL APPEAL/REPRESENTATION OF
ASFANDIYAR EX-ASSISTANT OF THE OFFICE OF
COMMISSIONER MARDAN**

ORDER:-

Brief facts of the case are that one Asfandiyar Khan ex-assistant of this office was terminated on 14/04/2014 from service for willful absence from the office since 02/02/2014. Against the said order dated 14/10/2014 the appellant went in appeal/representation before the Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar. After the trial/proceedings the Worthy SMBR, Khyber Pakhtunkhwa Peshawar remanded the case to reconsider the matter and to ascertain whether the procedure set out in rule 9 had to be followed in the present case or not. Brief facts are that an FIR for murder under section 302/324/34 PPC was registered against the present appellant on 5 February 2012 where after he absconded to evade arrest resultantly he absented himself from the office. On receiving the FIR from Police department the appellant was suspended vide this office order No.484-93/EA/ACR dated 08/02/2012. After suspension the then District Officer Revenue & Estate Mardan was appointed as enquiry Officer to dig out the facts.

The Enquiry Officer reported vide his letter NO.1790/DO(R&E) dated 23/02/2015 that the accused is absconder and enquiry proceedings could not be initiated. On 09/02/2014 vide office letter No. 2089/EA/ACR/2-1 sought latest position from District Police Office Mardan of the appellant/absconder, in response to which the District Police vide his letter No.4687/GB/Inv dated 15/09/2014 declared the appellant as absconder.

Appellant present with counsel and arguments heard. The case file as well as order of the Worthy SMBR, Khyber Pakhtunkhwa thoroughly perused.

Contd....P/2

See Page 046
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22/05/015

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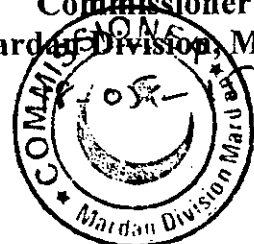
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From perusal of record and drawing wisdom from the arguments it reveals that the order passed by the undersigned bearing No.2292/ACR/EA/2-1 dated 14/10/2014 is in accordance with law and facts. The appellant was charged for his willful absence from official duties w.e.f 05/02/2012 till date for which he was granted penalty in accordance with E&D Rules 2011 after adopting all codal formalities. So far rules 9 of Khyber Pakhtunkhwa Government Servant (Efficiency) and Discipline Rules 2011 is concerned. Ample opportunity was given to the appellant and proper show cause notice of his willful absence was given to the appellant on 19/08/2014 to which the appellant had replied in detail through one Mr. Said Rehman on 23/08/2014, it means that the appellant was well aware of the proceedings. The appellant was removed from service on account of his willful absence and willful absence is mis-conduct under E&D rules 2011 and is a valid ground for initiating the proceedings. The appellant was accorded Major Penalty of removal from service as envisaged under rule 9 of the E&D rules 2011. Since the appellant was served show cause notice to which he replied through a representative, therefore secondly mode of service i.e. publication in the newspaper, is out of question. Therefore the order bearing No.2292/ACR/EA/2-1 dated 14/10/2014 is maintained. No order as to costs.

File be consigned to record room after necessary completion and compilation.

Announced.
18/05/2015

Stur
Commissioner
Mardan Division, Mardan



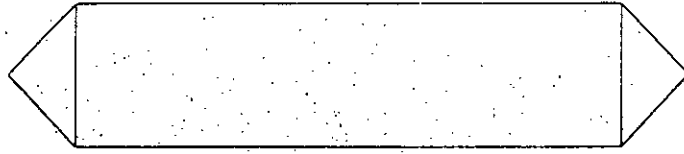
No. 440
Date of Application 22/05/015
Name of Applicant U. Q. Q. Q. Q.
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Urgent Fee il
Sign of Copyist [Signature]
Date of Preparation [Signature]

22/05/015

ATTESTED
[Signature]
Examiner/Reader to
Commissioner Court
Mardan Division Mardan

22/05/015

بعدالت جناب سرورس لٹریچر



2015ء جناب اسفندیار خان
اسفندیار خان بنام کمپنیز مہردان و سہ

سرورس لٹریچر 15

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لٹریچر کیلئے فنقل نٹناہ صہمد اللہ و لیس
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 تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ذکر کی کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پُر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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۔

اسفندیار خان

المرقوم 8 ماہ جون 2015

العبد العبد العبد

مقام لٹریچر کے لئے منظور ہے۔

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