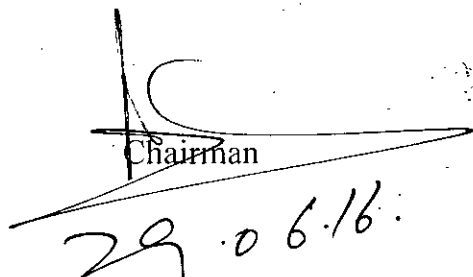


APPEAL No. 650/2016  
Abzal Elahi vs Govt

The appellant was obliged to have preferred service appeal within the period of one month from the date of knowledge of rejection of departmental appeal which was decided on 10.12.2007. The appellant failed to prefer service appeal within the specified period of one month as such the appeal of the appellant is not within time as prescribed by law. Facts of the reported case of 2003-PLD(C.S)-714 are entirely different from the facts of the present case and the appellant cannot be therefore given benefits of the case-law as such an order may amount to grant of exemption of appeal from the law of limitation. The appeal is therefore dismissed in limine. File be consigned to the record room.

ANNOUNCED

29.06.2016

  
Chairman

Appeal No. 650/2016  
Ajmal Elahi vs Govt

29.6.2016

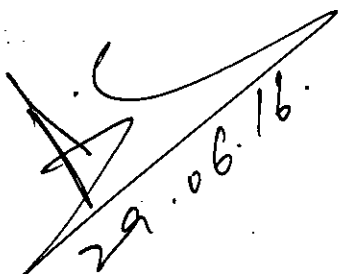
Counsel for the appellant present. Preliminary arguments heard and record perused.

Mr. Ajmal Elahi constable was compulsorily retired from service vide impugned order dated 04.10.2007 on the allegations of willful absence where-against he preferred departmental appeal which was also rejected on 10.12.2007. The appellant then preferred departmental appeal under Rule-11-A of Khyber Pakhtunkhwa Police Rules, 1975 which was also rejected vide order dated 27.4.2016 on different grounds including ground of time-limitation.

Learned counsel for the appellant argued that the impugned orders are against facts and law and are liable to be set aside. Regarding time limitation reliance was placed on case-law reported as 2003-PLD(C.S)-714 according to which appeal is to be decided on merits instead of technicalities.

Arguments of the learned counsel for the appellant heard and record perused.




The original order of compulsory retirement of the appellant from service was passed on 04.10.2007. Aggrieved from the said order appellant preferred departmental appeal which was also decided against him on 10.12.2007. Appellant was to prefer service appeal within a period of one month from the date of knowledge of the decision dated 10.12.2007 passed in departmental appeal. The appellant did not opt to prefer any service appeal within the stipulated period and, on the strength of amendment in Police Rules made in the year, 2014 preferred another departmental appeal under the provisions of Rule-11-A of Khyber Pakhtunkhwa Police Rules, 1975 which was also rejected on various grounds including time-limitation.

  
29.06.16

Form- A  
FORM OF ORDER SHEET

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

Case No. 650/2016

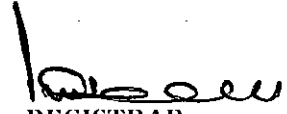
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15/06/2016	<p>The appeal of Mr. Afzal Ellahi resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 15.6.16.</p>
2	17.6.2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>22.6.2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2	2016	<p>Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 29.6.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Afzal Ilahi ex-constable No.522 Police Station Nara A.Abad received to-day i.e. on 14.06.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of departmental appeal and mercy petition mentioned in the memo of appeal are not attached with the appeal which may be placed on it.

No. 1030 /S.T,

Dt. 14-6 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M.Asif Yousafza Adv. Pesh.

Respected Sir

1- The appellant did not keep the copies of departmental appeal and Remission copy with himself therefore I did not mentioned them as Annexures.



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 650 /2016

*Afzal Ellahi*

V/S

Police Deptt:

**INDEX**

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Copy of medical prescriptions	A	4-12
3.	Copy of charge sheet	B	13
4.	Copy of statement of allegations	C	14
5.	Copy of reply to charge sheet	D	15
6.	Copy of final show cause notice	E	16
9.	Copy of reply to final show cause notice	F	17
10.	Copy of order dated 4.10.2007	G	18
11.	Copy of rejection	H	19
12.	Copy of rejection order of revision	I	20
14.	Vakalat nama	-----	21

APPELLANT

THROUGH:

*M. Asif Yousafzai*

(M.ASIF YOUSAFZAI)

&

*Taimur Ali Khan*

(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 650 /2016

Afzal Ellahi, Ex- Constable, No.522,  
Police Station Nara, Abbotabad.

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 634

Dated 14-6-2016

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Deputy inspector General of Police, Hazara Region Abbotabad.
3. The District Police Officer Abbotabad.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 27.04.2016 RECEIVED BY THE APPELLANT ON 26.05.2016, WHEREBY THE REVISION/MERCY PETITION UNDER-11(A) OF THE KPK POLICE RULES, 1975 OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER OF THE DIG HAZARA REGION, ABBOTABAD DATED 10.12.2007, WHEREBY HE MAINTAINED THE ORDER DATED 04.10.2007 PASSED BY THE DISTRICT POLICE OFFICER, ABBOTABAD.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 27.04.2016, 10.12.2007 AND 04.10.2007 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force on 24.02.2000 and completed all his due training etc and also have good service record throughout.

Re-submitted to day  
and filed.

Registrar

15/6/16.

Filed to-day  
Registrar

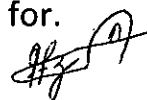
14/6/16

2. That the appellant became ill due to which the appellant concerned to Hospital and the wife of the appellant also some time became ill and due to domestic problems, he could not perform his duty and was compel to remain absent from his duty. (Copy of the medical prescriptions are attached as Annexure-A)
3. That the charge sheet and statement of allegation was served to the appellant for absenteeism which was duly replied by the appellant in which he clear the entire situation. (Copies of the charge sheet and statement of allegations and reply to charge are attached as Annexure-B,C&D)
4. That then one sided inquiry was conducted against the appellant but none of the statement was recorded or record examine in presence of the appellant. Even inquiry report was not handed over to the appellant.
5. That the final show causes notice was served to the appellant which was duly replied by the appellant in which he once again clear the entire situation of the facts. (Copies of final show cause notice and reply to show cause are attached as Annexure E&F)
6. That the penalty of compulsory retirement from service under RSO-2000 was imposed upon appellant vide order 04.10.2007 with effect from 04.06.2007 without chance of proper defence to the appellant. (Copy of order dated 04.10.2007 is attached as Annexure-G)
7. That against the order dated 04.10.2007, the appellant filed departmental appeal, but the same was rejected for no good ground on 10.12 2007. Then the appellant filed revision/ mercy petition to the PPO which was also rejected on 27.04.2016 and received by the appellant on 26.05.2016, however the appellant did not keep the copy of departmental appeal and revision/mercy petition with himself. (Copies of rejection order and rejection of revision/mercy petition are attached as Annexure-H&I)
8. That now the appellant come to this august tribunal on the following grounds amongst others.

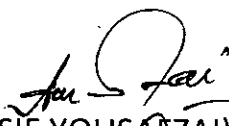

**GROUNDS:**

- A) That the impugned order dated 27.04.2016, 10.12.2007 and 04.10.2007 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That the inquiry proceeding was not conducted according to the prescribed procedure and no opportunity of defence was provided to the appellant even inquiry report was not handed to the appellant.
- D) That the penalty of compulsory retirement was imposed upon the appellant in retrospective which is not permissible in the law.
- E) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- F) That the appellant did not intentionally absent from his duties but due to his illness and his domestic problems, he was unable to perform his duty. As the illness is beyond the control of human, therefore the appellant was compel to remain absent from his duties due to his treatment.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

  
APPELLANT  
Afzal Elahi

THROUGH:

  
(M.ASIF YOUSARZAI)  
&   
(TAIMUR ALI KHAN)

ADVOCATES, PESHAWAR



2

B (13)  
No. 4  
22.8.07

CHARGE SHEET

I, Dr. Ishtiaq Ahmad Marwat, District Police Officer Abbottabad as competent authority, hereby charge you FC Afzal Elahi No:522 as follows:-


You FC Afzal Ellahi No.522 while posted at Police Station Nara Abbottabad absented yourself from duty from 04-06-07 to 02-07-07 (28 days) 03-07-07 to 15-07-07(12 days), 21-07-07 to 26-07-07(05 days), 29-07-07 to 05-08-07(07 days) (total 52 days) and 06-08-07 to till date, without any leave/ permission. This amount gross misconduct at your end hence charge sheet.

By the reasons of above, you appear to be guilty of misconduct under Section-3 of the NWFP (Removal from Service) Special Powers 2000, and have rendered yourself liable to all or any of the penalties specified in Section-3 of the Ordinance. You are therefore required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/ committee, as the case may be.

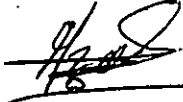
Your written defence, if any should reach the enquiry officer/ committee with in the specified report, failing which it shall be presumed that you have no defence to put in and in that case expartee action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

  
District Police Officer,  
Abbottabad.

کاپی کراؤ اور سب سے متعلقہ  
کاپی کراؤ

  
27.8.07

Attested  


(5)

C 14

DISCIPLINARY ACTION

I, Dr. Ishfaq Ahmad Marwat, District Police Officer Abbottabad as competent authority charge you FC Afzal Ellahi No.522 from certain omissions as elaborated below which render you liable to be proceeded against departmentally with in the meaning of Section-3 of NWFP. Removal from service (Special Power Ordinance 2000).

STATEMENT OF THE ALLEGATION

You FC Afzal Ellahi No.522 while posted at Police Station Nara Abbottabad absented yourself from duty from 04-06-07 to 02-07-07 (28 days) 03-07-07 to 15-07-07(12 days), 21-07-07 to 26-07-07(05 days), 29-07-07 to 05-08-07(07 days) (total 52 days) and 06-08-07 to till date, without any leave/ permission. This amount gross misconduct at your end.

For the purpose of scrutinizing the behavior/ conduct of said accused official with reference to the above allegation DSP Havelian is appointed as enquiry officer.

The enquiry officer shall in accordance with the provision of the ordinance, provided the accused record its finding and make with in 7 days of the receipt of this order, commendation as to why punishment or other appropriate action against the accused.

  
District Police Officer,  
Abbottabad.

No. 419 dated Abbottabad the 22. 8 2007.

Copy of above is sent to DSP Havelian for information. He should complete the enquiry within 15 days positively.

District Police Officer,  
Abbottabad.

*Attested*  


جوابے چارج شیٹ کو والد عبیدی 419

22-8-67

3 بار یہ جناحہ DP6 صاحبہ ایسٹ آباد

جناحہ عالیہ

میں کھانا پائڑہ میں لکھنا ہے تھا۔ میر گھر  
میں حالات کافی ناسازگار تھے۔ جس وجہ  
تھی زینہ شہت تھی۔ اور اسی وجہ  
سے تجھ سے کسپر طفری ہوئی۔ چونکہ  
کھانا سے میرا گھر کافی دور ہے۔  
میں ایک بیانیہ یا عزیز گھرانے سے تعلق  
دکھتا ہوں اور توڑی اچھے طریقہ سے کرنے  
کا خواہاں ہوں۔

جناحہ سے دیکھنے القاس کرنا ہوگا آفری  
بار ہو کر الیک کو اس دفعہ معافی دیا  
جاوے آمینہ الیک پر طفری سے خطا  
انداز میں توڑی کرینگا۔ اور کوئی  
شکایت کا موقع نہیں دوں گا۔  
نواز شاہ

افضل الہی - 522

حال کھانا پائڑہ

Attested  
A

433-5 الف  
PS-city

E  
16

FINAL SHOW CAUSE NOTICE

I, Dr. Ishtiaq Ahmad Marwat District Police Officer Abbottabad as competent authority, under the NWFP Removal from Service (Special Power) Ordinance, 2000 do hereby serve you...

1. i) That consequent upon the completion of inquiry conducted against you by the inquiry committee in which you were given opportunity of hearing, but you could not offer his satisfactory account.  
ii) From the perusal of the findings and recommendations of the Inquiry Committee, the material on record and other connected papers including defence statement before the said committee.

I am satisfied that you have committed the following acts/ omissions specified in Section 3 of the said Ordinance.

You FC Afzal Allahi No.522, while posted at PS Nara Abbottabad, absented yourself ~~for your duty~~ from 04-06-07 to 02-07-07(28 days), 03-07-07 to 15-07-07 (12 days), 21-07-07 to 26-07-07(05 days), 29-07-07 to 05-08-07 (07 days), 06-08-07 to 17-08-07 (11 days), 18-08-07 to 26-08-07(08 days)and 28-08-07 to 05-09-07 (08 days) and 06-09-07 to 07-09-07 (01 day) total 80 days, and 16-09-07 to till date, without any leave/ permission. This amount gross misconduct at your end.

2. As a result there of, I as competent authority, have sensitively decided to impose upon you the penalty of Major punishment under Section 3 of the said Ordinance.
3. You are therefore required to find show cause as to why the aforesaid penalty should not be imposed upon you and also intimate as to whether you desire to be heard in-person.
4. If no reply to this the Final Show Cause Notice is receive within seven (7) days of its receipt in the nominal course of circumstances, it is all presumed that you have no defence to put in and in that case ex-parte action will be taken against you.
5. The copy of the findings of the Inquiry Officer is enclosed.

28  
11/11/07  
8/8  
8/8

Attested  
A

District Police Officer,  
Abbottabad.

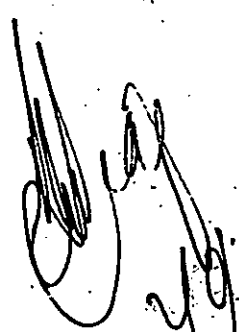
جناب عالی


بجوار ٹائٹل شو کاز نوٹس نمبر 419 مورخہ 19/9/2007 مورخہ خدمت  
 ہوں۔ کہ سائل عیالدار ہے۔ چھوٹے چھوٹے بچے ہیں۔ زوجہ ام عموماً بیمار  
 رہتی ہے۔ جو بوجہ بیماری نہ تو بچوں کیلئے کھانا لیکھانے کی طاقت  
 رکھتی ہے نہ انکے پارچاٹ دھوسکتی ہے۔ نہ ہی گھر کے دیگر  
 کام صفاٹ وغیرہ کے قابل رہتی ہے۔ جس کی وجہ سے سائل کو  
 گھر سے نکلنا ہی رہتا ہے۔ اور سائل کو بچوں کی نگہداشت اور  
 انکے خورد و نوش اور خوراک پر شاک وغیرہ کی خاطر گھر میں  
 رہنا پڑتا ہے۔ جس کی وجہ سے سائل کی غیر حاضریاں ہوئی ہیں  
 تاہم سائل آئندہ قناتہ رہیگا۔

استدعا عیالہ سائل کی سابقہ کرتا ہیوں کو معاف فرمایا  
 جاکر سائل کا عرصہ غیر حاضری Leave of the kind due  
 میں شمار فرمایا جا کر ٹائٹل شو کاز نوٹس داخلہ نمبر فرمایا جاوے۔  
 معیت نواز شہ یوگی۔

26/9/2007

سائل افضال الہی کیلئے 522 حصینہ قناتہ نارہ

order  
 Compulsory health  
 from services  


880  
 88  
 88  
 Attested  


ORDER

This order would dispose off the departmental enquiry conducted against Constable Aizal Eshai No.522 by Muhammad Anif DSP Havchian for the allegation that he while posted at PS Nara absented himself from official duty w/c from 04-06-07 to 02-07-07(28 days), 03-07-07 to 15-07-07(12 days), 21-07-07 to 26-07-07(05 days), 29-07-07 to 05-08-07 (07 days), 06-08-07 to 17-08-07(11 days), 18-08-07 to 26-08-07(08 days), 28-08-07 to 05-09-07(08 days), 06-09-07 to 07-09-07(01 day) and from 16-09-07 to 24-09-07 total 88 days.

He was issued and served with Charge Sheet alongwith summary of allegation to which he was given opportunity of hearing but he could not offer satisfactory account. He was also issued and served Final Show Cause Notice, wherein he was asked to submit in his defence reply with in 07 days and given liberty to be heard in person. The reply of Final Show Cause Notice is received within stipulated period. He was heard in person in orderly room, but he could not advance satisfactory account. All this provide ample ground to presume that he is unwilling worker having no zeal and fervor in service. Pusal of his service record revealed that he is habitual absentee. He was appointed in the department on 24-02-2000, during his short period of service he absented himself 264 days 88-352 days at 26 different occasion. He was warned time and again awarded extra drill fine imposed, put into Quarter guard, stoppage of increment, forfeiture of his approved service even once time dismissed from service due to his misconduct but he did not reform himself. He is not likely to become a good police officer rather he is a liability on state exchequer. Enquiry officer recommended him for awarding major punishment.

In view of above and on the recommendation of Enquiry Officer, I feel that he is not fit to be retained in Police force, therefore is awarded major punishment of compulsory retirement from service under the NWFP removal from service (Special Power) Ordinance 2000 from the date of absence i.e. 04-06-07.

Order announced.

District Officer, Abbottabad.

*Handwritten signature and 'Approved' stamp*

4-10-07  
OB No 430

522

5/18

*Handwritten initials and marks*

H  
= (19)

From:-

The Dy: Inspector General of Police  
Hazara Region Abbottabad.

To :-

The Distt: Police Officer Abbottabad.

No.

13883

/E, dated Abbottabad the

18/12/07

Subject:-

REPRESENTATION.

Memo:-

Please refer to your Office Memo: No. 16848  
dated 19.11.2007.

Representation of Ex-Constable Afzal Ellahi  
No. 522 of your Distt: has been considered and filed by  
Region Chief:

His Service roll and Enquiry file received  
with your Memo: under reference is returned herewith for  
record in your office.

dc Dy: Inspector General of Police  
Hazara Region Abbottabad.

Attested  
A



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
CENTRAL POLICE OFFICE,  
PESHAWAR.

No. S/ 3316 /16, dated Peshawar the 27/04/2016.

**ORDER**

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Ex-Constable Afzal Elahi No. 522**. The appellant was awarded punishment of **Compulsory Retired** from service by DPO, Abbottabad vide OB No. 430, dated 04.10.2007, on charges that absence from service for a period of total 88 days.

He preferred appeal before the RPO, Hazara which was examined and filed / rejected vide Order No. 13883/E, dated 10.12.2007.

Meeting of Appeal Board was held on **10.03.2016**, wherein the appellant was heard in person. The enquiry papers were also examined. On examination of record, it revealed that he was dismissed in the year 2006 and then re-instated by the appellate authority i-e RPO, Hazara. He was awarded punishment of stoppage of one year increment without cumulative effect and was twice awarded punishment of forfeiture of two years approved service on the charges of absence on different occasions in his service. His petition is also badly time barred. Therefore, the petition of the petitioner is barred by law and limitation and **worth rejection**.

This order is issued with approval by the Competent Authority.

*Najeeb*

(NAJEEB-UR-RAHMAN)  
AIG / Establishment,  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar. *h*

No. S/ 3317-24 /16,

Copy of above is forwarded for information and necessary action to the:-

1. Regional Police Officer, Hazara Region, Abbottabad.
2. District Police Officer, Abbottabad.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PRO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV, CPO, Peshawar.
8. I/C Central Registry Cell, (CRC), CPO.

*h*

*3/26/16 Recd ET*

*Attested*  
*[Signature]*

*[Handwritten notes]*



قیمت  
10 روپے



54095



پشاور بار ایسوسی ایشن، خیبر پختونخوا

رابطہ نمبر:

بعدالت جناب: سر جسٹس سید رفیع اللہ

<p>منجانب: ایبلا نیٹ</p> <p>افضل القیاسی</p> <p>بانی و سربراہ ایبلا نیٹ</p>	<p>دو کلاں</p> <p>علت نمبر:</p> <p>موردہ:</p> <p>جرم:</p> <p>تھانہ:</p>
-----------------------------------------------------------------------------	-------------------------------------------------------------------------

**بابت تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
 آن مقام کیس نمبر 1000/2018 میں محمد رفیق الرحمن اور محمد رفیق الرحمن کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقریر حالت و فیصلہ برصفت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں مدد منتظر کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا تاخیر یا غلطی یا اہیلگی اور منسوخی، نیز  
 دائر کرنے اہیل نگرانی و نظریاتی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہو گا اور صاحب  
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا مانتہ ہذا اختتام منظور و قبول ہوگا دوران مقدمہ  
 میں جو خرچہ ہر جانہ التوائے مقدمہ کے حساب سے ہوگا وہ وکیل موصوف و صاحب کے کار مختار ہوگا کوئی تاریخ پیشی مقام  
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے لہذا پیروی ہذا مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم:

\_\_\_\_\_

واہ شد

مقام

Accepted  
 Akhtar  
 Akhtar