Form- A FORM OF ORDER SHEET

Court of		
	-	

Implementation Petition No. 547/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge	
1	2	3	
1	11.06.2024	The implementation petition of Dr. Noor ul	
		Mabood submitted today by Mr. Rizwan Ullah Advocate.	
		It is fixed for implementation report before Single Bench	
		at Peshawar on 13.06.2024. Original file be	
		requisitioned. AAG has noted the next date. Parcha peshi	
		given to counsel for the petitioner.	
		By the order of Chairman	
		Daid_	
		REGISTRAR	

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Dr. NOOY-ul-Hoberd Versus The CM Through Princepal Secretaryea

s NO	CONTENTS	YES	NO
H			İ
1.	This petition has been presented by: Advocate Court	V	,
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?		
3.	Whether appeal is within time?		
4.	Whether the enactment under which the appeal is filed mentioned?	V	
5.	Whether the enactment under which the appeal is filed is correct?	1	
6.	Whether affidavit is appended?	1	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	V	
8.	Whether appeal/annexures are properly paged?	√.	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	V	
10.	Whether annexures are legible?	1	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	V	
13.	Whether copy of appeal is delivered to AG/DAG?	1	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	1	
1 5.	Whether numbers of referred cases given are correct?	1	
<u>1</u> 6.	Whether appeal contains cutting/overwriting?	×	
17.	Whether list of books has been provided at the end of the appeal?	√.	
18.	Whether case relate to this court?	1	
19.	Whether requisite number of spare copies attached?	V	
20.	Whether complete spare copy is filed in separate file cover?	V	-
21.	Whether addresses of parties given are complete?	V	
22.	Whether index filed?	1	
23.	Whether index is correct?	-	
24.	Whether Security and Process Fee deposited? On		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along	V	
	with copy of appeal and annexures has been sent to respondents? On		
26.	Whether copies of comments/reply/rejoinder submitted? On		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On		
.			

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Name:-

Signature:- 14 Dated:- 11-6-2024

PHC Prt Composing Canter, Ashawar High Court, Ashawar Pioneer of legal drafting cL composing Cell No:-+923028838600/+923119149544/+923159737151 Email:-phc.petcomposing@gmail.com

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 547 /2024 In Service Appeal No. 507/2023

1. Dr. Noor ul Mabood, (Ex-Deputy Dean PGMI) R/O House No. 248, Street No. 1, Sector J-4, Phase-2, Hayatabad, Peshawar.

APPELLANT

VERSUS

1. The Chief Minister, Khyber Pakhtunkhwa through Principal Secretary etc

RESPONDENTS

I N D E X

S.No	Particulars of documents	Annexure.	Pages #
1	Execution Petition		1-2
· 2	Affidavit	_	3
3	Copy of judgment of this Tribunal dated 26-10-2023	"A"	4-14
4	Copy of application dated 15-11-2023	"B"	15
5	Wakalatnama		

Petitioner

Through

Dated: 10-06-2023

Rizwanullah

Advocate High Court, Peshawar.

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 547 /2024 In Service Appeal No. 507/2023 Khyber Pakhtukhwa Service Tribunal

Diary No. 13402

Duted 11-06-2024

1. Dr. Noor ul Mabood, (Ex-Deputy Dean PGMI) R/O House No. 248, Street No. 1, Sector J-4, Phase-2, Hayatabad, Peshawar.

APPELLANT

VERSUS

- 1. The Chief Minister, Khyber Pakhtunkhwa through Principal Secretary.
- 2. The Chief Secretary, Khyber Pakhtunkhwa Province, Peshawar.
- 3. The Secretary to Government of Khyber Pakhtunkhwa, Health Department Peshawar.

RESPONDENTS

APPLICATION UNDER SECTION 7 (2) (D)
OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR
EXECUTION OF JUDGMENT DATED
26-10-2023 PASSED IN SERVICE APPEAL
NO. 507/2023.

RESPECTFULLY SHEWITH,

Short facts giving rise to the present execution petition are as under:-

- 1. That the petitioner invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No. 507/2023 praying therein that he may kindly be granted antedated promotion in (BPS-20) from the date when his erstwhile juniors were promoted w.e.f 10-04-2017.
- 2. That this Hon'ble Tribunal vide judgment dated 26-10-2023 allowed the appeal and directed the respondents to place the case of appellant before the Provincial Selection Board for consideration of his proforma promotion to

(BPS-20) w.e.f 10-04-2017 within a period of 03 months of receipt of copy of judgment of this Tribunal. It would be advantageous to reproduce herein the relevant portion of the judgment for facility of reference:

"In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Provincial Selection Board for consideration of proforma promotion to BPS-20 with effect from 10-04-2017 within a period of 03 months of receipt of copy of this judgment.

(Copy of Judgment is appended as Annex-A.)

3. That the petitioner after obtaining the certified copy of judgment of this Hon'ble Tribunal, requested the respondent No. 03 for its implementation in letter and spirit vide application dated 15-11-2023. But the respondent didn't bother for the same after lapse of sufficient considerable time of 06 months and hence the instant execution petition.

(Copy of application is appended as Annex-B.)

In view of the above narrated facts, it is, therefore, humbly prayed that coercive measures may kindly be adopted against the respondents for implementation of the judgment passed by this Hon'ble Tribunal in service appeal No. 507/2023 so as to meet the ends of justice.

Dated: 10-06-2024

Petitioner

Through:

Rizwanullah M.A. LL.B

Advocate High Court, Peshawar Email ID: advocaterizwanullah@gmail.com Mobile No. 0300-596-5843

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No.	/2024
In	
Service Appeal No. 507/2023	

1. Dr. Noor ul Mabood, (Ex-Deputy Dean PGMI) R/O House No. 248, Street No. 1, Sector J-4, Phase-2, Hayatabad, Peshawar.

APPELLANT

VERSUS

1. The Chief Minister, Khyber Pakhtunkhwa through Principal Secretary etc

RESPONDENTS

AFFIDAVIT

I, Dr. Noor ul Mabood, (Ex-Deputy Dean PGMI) R/O House No. 248, Street No. 1, Sector J-4, Phase-2, Hayatabad, Peshawar, do hereby solemnly affirm and declare that the contents of the accompanied execution petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

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Deponent
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Annex-

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWA

Service Appeal No. 507/2023

Date of Institution ... 07.03.2023 Date of Decision ... 26.10.2023

Dr. Noor-ul-Mabood, (Ex-Deputy Dean PGMI) R/O House No. 248, Street No. 1, Sector J-4, Phase-2, Hayatabad, Peshawar. (Appellant)

VERSUS

Chief Minister, Khyber Pakhtunkhwa through Principal Secretary and 08 others. (Respondents)

MR. RIZWANULLAH, Advocate

For appellant.

Precise averments raised by

MR. MUHAMMAD JAN, District Attorney

For official respondents.

Shawar

MR. SALAH-UD-DIN MR. MUHAMMAD AKBAR KHAN

SALAH-UD-DIN, MEMBER:-

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

Peshawar

JUDGMENT:

the appellant in his appeal are that he was serving in BPS-18 and was at serial No. 4 of the seniority list, while private respondents

No. 4 to 9 were at serial No. 10, 11, 14, 15, 16 & 18 in the seniority

list respectively. The case of the appellant alongwith others were placed before the Provincial Selection Board for their promotion to

BPS-19 on 14.12.2012, however the appellant was wrongly and illegally superseded, while his juniors were promoted vide

Notification dated 06.03.2013. Nonetheless, in subsequent meeting of the Provincial Selection Board, the appellant was also promoted to BPS-19 on regular basis vide Notification dated 21.10.2013 but ATTIESTED with immediate effect. The appellant being aggrieved of the

recommendations of the previous meeting of Provincial Selection

Board dated 14.12.2012; filed departmental appeal, which was rejected vide order dated 09.04.2014 constraining him to file Service Appeal No. 813/2014, which was disposed of vide judgment dated 28.10.2016 by remitting the case of the appellant to the respondents for placing it before Provincial Selection Board for consideration of antedation of his promotion. The judgment passed by this Tribunal was not implemented by the respondents constraining the appellant to file Execution Petition No. 63/2017 before this Tribunal. In the meanwhile, juniors of the appellant i.e private respondents No. 4 to 9 were further promoted to BPS-20 vide Notification dated 10.04.2017. The appellant was retried from service on reaching the age of superannuation on 13.11.2017, however his Execution Petition remained pending before this Tribunal and was ultimately implemented vide Notification dated 13.10.2022, whereby the promotion of the appellant from BPS-18 to BPS-19 was antedated. Juniors of the appellant were promoted to BPS-20 vide Notification dated 10.04.2017 and as the appellant was also legally entitled for consideration of his promotion to BPS-20 with effect from 10.04.2017 alongwith his juniors, therefore, he filed departmental appeal but the same was not responded within the statutory period, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents put appearance through their representative and contested the appeal by appearance through their representative and contested the appeal by service Tellurante way of filing written reply raising therein numerous legal as well as

)./

factual objections, while private respondents No. 4 to 9 failed to appear and were thus placed ex-parte vide order dated 17.07.2023.

Learned counsel for the appellant contended that the 3: appellant was illegally superseded in the meeting of Provincial Selection Board held on 14.12.2012 for promotion from the post of BPS-18 to BPS-19 and his supersession was set at naught by this Tribunal vide judgment dated 28.10.2016. He next contended that the respondents failed to timely implement the judgment dated 28.10.2016 passed by this Tribunal and the appellant was wrongly and illegally deprived from his promotion to the post of BPS-20. He further contended that vide Notification dated 10.04.2017, promotions were made to the post of BPS-20 and private respondents being juniors to the appellant were also promoted, however the appellant was wrongly and illegally deprived from such promotion due to lethargic attitude of the respondents. He next argued that had the appellant being not superseded wrongly and illegally and had the judgment dated 28.10.2016 passed by this Tribunal was timely implemented by the respondents, the appellant could have been promoted to the post of BPS-20 alongwith his juniors on 10.04.2017. He further argued that the appellant was not treated by the respondents in accordance with law, rules and policy on the subject and his rights guaranteed under Article-4 of the Constitution of Islamic Republic ofn Pakistan, 1973 were badly violated. Reliance was placed on 2003 SCMR 1140, 2006 SCMR 496, 2007 SCMR 554, PLD 2007 Supreme Court 472, 2007 SCMR 1256, 2012 SCMR 126, 2015 YLR 1733, 2016 SCMR

ATTESTED

1784, 2018 PLC (C.S). Note 49, 2021 SCMR 630 and 2022 SCMR 2020.

- 4. On the other hand, learned District Attorney for official respondents contended that the judgment dated 28.10.2016 passed by this Tribunal was implemented by giving antedated effect to the promotion of the appellant to BPS-19. He next contended that the promotion to BPS-20 is being made on the basis of selection on merit alongwith 04 months advance training in management from a recognized institutions or PHSA and as the appellant did not meet the required criteria, therefore, he could not be promoted to BPS-20. He further contended that the appellant was treated in accordance with law and none of his rights guaranteed under the Constitution of Islamic Republic of Pakistan were violated.
- 5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the official respondents and have perused the record.
- being appointed as Medical Officer, who was promoted to BPS-18 on 03.09.1995. He was at serial No. 04 of the list of Officer of BPS-18 and his case alongwith others was placed before the Provincial Selection Board in its meeting held on 14.12.2012, however he was superseded on the ground of low efficiency index and poor performance. It is, however astonishing that in the very next meeting held on 06.03.2013, the appellant was recommended for promotion to BPS-19 and he was so promoted to the promoted of th

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vide Notification dated 21.10.2013. The appellant challenged his previous supersession in the meeting of PSB held on 14.12.2012 before this Tribunal by way of filing Service Appeal No. 813/2014, which was disposed of by this Tribunal vide judgment dated 28.10.2016 by remitting the case of the appellant to the respondents for placing it before Provincial Selection Board for consideration of antedation of his promotion. The judgment dated 28.10.2016 so passed by this Tribunal was required to have been timely implemented by the respondents, however they failed to do so, constraining the appellant to approach this Tribunal by way of filing Execution Petition No. 63/2017. In the meanwhile, certain doctors including juniors of the appellant i.e private respondent No. 4 to 9 were further promoted to BPS-20 vide Notification dated 10.04.2017 but the appellant remained deprived of such promotion due to lethargic attitude of the respondents in implementation of the judgment dated 28.10.2016 passed by this Tribunal in favour of the appellant. The agony of the appellant was prolonged by the respondents due to non-implementation of the judgment passed in his favour and this Tribunal had to pass order dated 20.10.2021 in the Execution Petition for the purpose of clarification and enabling the respondents to implement the said judgment. The aforementioned order dated 20.10.2021 is reproduced as below:-

"Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

It is a matter of fact that the petitioner was one among the panelist officers who were considered in PSB meeting held on 14.12.2012 ad the PSB had EXAMINER
Service Tribunal

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recommended his supersession. However, subsequent meeting of PSB held on 07.08.2013, the petitioner was again included in the panelist officers consideration considered and recommended for promotion to BPS-19 on regular basis; and vide notification dated 21.10.2013, he was promoted with immediate effect. The petitioner challenged his supersession recommended by the PSB in its meeting held on 14.12.2012 and his service appeal No. 813/2014 was yet filed before this Tribunal. which later on was filed and accepted vide judgment dated 28.10.2016 presently under implementation. According to the spirit of the judgment, the suppression of the petitioner was converted into deferment on the basis of precedent of the case of Dr. Muhammad Ali Chohan decided on 26.12.2012. The implementation of the judgment at credit of the petitioner is so far awaited mainly for the reason of miscomprehension of the operative part of the judgment. Therefore, it is clarified that the judgment under implementation is meant to undo the recommendations of supersession of the petitioner by PSB in its meeting held on 14.12.2012 and it operates for conversion of the recommendation from supersession into deferment of promotion. Accordingly, the petitioner is deemed to be deferred for promotion on 14.12.2012. When the petitioner was promoted in view of the recommendations of PSB made on 06.03.2013, the present judgment was not in field and this judgment has been passed on 28.10.2016 for conversion of the supersession of the petitioner for promotion into deferment of his promotion, therefore, there is need for issuance of corrigendum of the order dated 21.10.2013 to antedate the promotion of the petitioner from 14.12.2012. The respondents are directed to issue the necessary corrigendum in the light

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Service Tribunal

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of given observations without further delay. (Emphasis supplied). Copy of this order be sent to the respondents. Learned AAG shall also take the respondents on board for compliance of this order. Case to come up on 18.11.2021 before S.B.

- 7. The judgment dated 28.10.2016 passed by this Tribunal in favour of the appellant was ultimately implemented by the respondents after considerable delay on 13.10.2022 i.e after a delay of about 06 years. It is evident from the record that had the appellant not been wrongly superseded in the meeting of Provincial Selection Board held on 14.12.2012 for promotion to BPS-19 and later on, had the judgment dated 28.10.2016 passed by this Tribunal being timely implemented, the case of the appellant could have also been placed before the Provincial Selection Board for his promotion to the post of BPS-20 alongwith the respondents, who were admittedly junior to the appellant and were promoted to BPS-20 vide Notification dated 10.04.2017.
- 8. During the pendency of his Execution Petition, the appellant reached the age of superannuation on 13.11.2017 and stood retired vide Notification dated 02.03.2017 issued by the competent Authority. One of the contention raised by the respondents in their comments is to the effect that as the appellant was promoted to BPS-19 after his retirement, therefore, he is not entitled for further promotion under the rules. The afore-mentioned contention of the respondents is having no force for the reason that it was due to TISTED wrong supersession of the appellant in the meeting of Provincial Service Tribuna Selection Board held on 14.12.2012 for promotion to BPS-19 and

then non-implementation of the judgment of this Tribunal by the respondents in due time that the case of the appellant could not be placed before the Provincial Selection Board for his further promotion to BPS-20. The other contention of the respondents is that according to Schedule-II clause 2 of the Khyber Pakhtunkhwa Health (Management) Service Rules, 2008, promotion to BPS-20 is being made on merit alongwith 04 months advance training in management from a recognized institutions or PHSA, which training has not been acquired by the appellant. The requirement of 04 months Management Training could not be imposed in case of proforma promotion of the appellant to BPS-20 for the reason that it was due to fault of the respondents that the appellant could not be promoted timely to BPS-19 and was thus deprived from attaining the required Management Training. It is by now well settled that if a person is not considered due to any administrative slip, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches the age of superannuation before the promotion, then the avenue or pathway of proforma promotion comes into field for his rescue. Supreme Court of Pakistan in its judgment reported as 2012 SCMR 126 has held as below:-

"6. A perusal of the afore-referred amended provision would indicate that it was not retrospective in effect as it was specifically stipulated that "it shall come into force at once". The question of its retrospectivity or otherwise was a moot point before this Court in Muhammad Amjad v. Israr Ahmed (2010)

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SCMR 1466) and this Court candidly held that the amended provision could not be given retrospective effect. That being so, the arguments of Learned Law Officer with reference to subsection (5) of section 8 referred to in the preceding paragraph would be of no avail to him. Coming to the facts of this, we find that it has not been disputed before this Court that much before the retirement of the respondents, a working paper was prepared by the department with regard to their promotion but the matter was delayed without any justifiable reason and in the meanwhile respondents attained the age of superannuation. They cannot be made to suffer on account of the departmental lapse. The arguments of learned Law Officer that the respondents were not entitled at the relevant time to be granted promotion for one reason or the other is rather misconceived as the operative part of the impugned judgment has candidly directed that the working paper of the respondents shall be prepared and they will be considered for grant of next grade notwithstanding their retirement, if they are even otherwise found entitled thereto. This in fact would now be proforma promotion."

- 9. Similarly, Supreme Court of Pakistan in its judgment reported as 2022 SCMR 2020 has held as below:-
 - 6. If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the venue or pathway of proforma promotion comes into field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board

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despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault on his own wrongfully prevented from rendering service to the Federation in the higher post, directs that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or up-gradation arising from the antedated fixation of his seniority. We often noted that unjustified delay in proforma cases trigger severe hardship and difficulty for the civil servant and also create multiplicity of litigation it would be in the fitness of things that the competent authority should. fix a time line with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention."

10. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Provincial Selection Board for consideration of his pro-forma promotion to BPS-20 with effect from 10.04.2017 within a period of 03 months of receipt of copy of this AT

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judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 26.10.2023

(SALAH-UD-DIN) MEMBER (JUDICIAL)

(MUHAMWAD AKBAR KHAN) MEMBER (EXECUTIVE)

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Service Tribunal

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Annex-B

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То

The Worthy Secretary
Health Department

Khyber Pakhtunkhwa, Peshawar.

Subject:

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 26/10/2023 PASSED IN SERVICE APPEAL NO. 507/23.

Respected Sir,

The applicant filed Service Appeal for Promotion BPS-20, with effect from 10/04/2017, which was allowed vide judgment dated 26/10/2023. (Copy of Judgment is attached).

It is, therefore, requested that the judgment of Khyber Pakhtunkhwa Service Tribunal may kindly be implemented.

Dated: 15/11/2023

Atested.

Appellant

APPLICANT

Noor UI Mabood S/o Sahib Zada R/o. House No. 248, Street No. 1, Sector J-4, Phase II, Hayatabad, Peshawar

CNIC No: 17301-1383248-3 Cell No: 0345-9060272

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پٽاور بارايسوي ايٽن ،خسيبر پخستونخواه <u>44005</u>	
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Dr. Noor-ul-Habood	
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The CM Through Phinapal	
Secretary and others	
باعثتمريرانكه	
مقدمه مندرجه عنوان بالامیں اپی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ	Ī
Tomanallah Zy ishaway Tomanallah	1
كر ك اقرار كيا جاتا نے كر صاحب موصوف كو مقدمه كى كل كاروائى كا كال افتيار ہوگا ، نيز وكيل صاحب كو	
راضی نامہ کرنے و تقر (عالث و فیصلہ بر علف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہرتم کی تقیدیق	ļ
زریں پر دستخط کرمنے کا اختیار ہوگا ، نیز بصورت عدم پیروی یا ڈگری بکطرفہ یا ایل کی برآمدگی اورمنسوفی ، نیز	
دائر کرنے ایل گرانی ونظر تانی و پیردی کرنے کا مخار ہوگا اور بصورت ضرورت مقدمہ ندکورہ کے کل یا جزوی	4
کاروائی کے واسطے آور ویل یا مخار قانونی کو آئے ہمراہ یا آئے بجائے تقر رکا اِخْتیار ہوگا اور صاحب معرر شدہ کو وہی جملۂ ندکورہ الا اختیارات حاصل ہو ں کے اور اس کا ساختہ پر داختہ منظور و تبول ہوگا	=
مقرر سرہ کو وہل جملۂ کمرکورہ بالا اصلیارات کا علی ہو ل کے اور اس کا ساحتہ پر داختہ منظور و کبول ہو گا دوران مقدمہ میں جو خرچہ ہر جانبہ التوالئے مقدمہ کے سب سے ہوگا کے کہ باری پیشی مقام دورہ یا حد سے	1
دوران عمد میں بو ترچہ ہر جانہ ہوا کے عمد منے علب سے بولا یہ وی مقام دورہ یا خد سے باہر ہو تو ویل صاحب پابندانہ ہوں مے کہ چروی مذکورہ کریں ،البذا وکالی نامالکھ دیا کہ سند رہے	
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