


FORM OF ORDER SHEET

Court of _____

Appeal No. 965 /2024


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/07/2024	<p>The appeal of Mr. Shah Nawaz Khan resubmitted today by Mr. Awais Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 12.07.2024. Parcha Peshi given to the counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Shah Nawaz Khan received today i.e on 04.07.2024 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

- 1- Address of appellant is incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rule 1974.
- 2/ Copy of order dated 16.05.2024 mentioned in the heading of the appeal is not attached with the appeal be placed on it.

No. 301 /Inst./2024/KPST,

Dt. 5/7 /2024.


OFFICE ASSISTANT
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Awais Khan Adv.
High Court Peshawar.

Note:-

object 1: is re-completed and removed
deficiency

object 2: the date was mentioned mistakenly
clerical mistake, and its 10-8-24 is
a signed date only. On 4-6-24
we have been commenced.

Resubmitted



10-7-24

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Service Appeal No. 9/65 /2024

Shah Nawaz Khan..... Appellant

Versus

Government of Khyber Pakhtunkhwa and others

..... Respondents

I N D E X

S.No.	Description of documents.	Annexure	Pages.
1.	Service Appeal		1- 3
2.	Affidavit		4
3.	Suspension Application with affidavit		5-6
4.	Copy of 1 st Transfer order dated 05.10.2023	A	7-8
5.	Copy of Arrival Report	B	9
6.	Copy of impugned order dated 09.04.2024	C	10
7.	Copy of Departmental Appeal	D	11-12
8.	Copy of Rejection Order	E	13
9.	Wakalatnama		14

Dated 04.07.2024

Appellant

Through

Awais Khan

Advocate High Court

1

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

Service Appeal No. 965/2024

Shah Nawaz s/o Gula Din Senior Clerk Government Naseer Uddin
Khan Babar Memorial Hospital, PeshawarAppellant

Versus

1. Government of Khyber Pakhtunkhawa through Secretary Health.
2. Director General Health Services Khyber Pakhtunkhawa,
Peshawar.
3. Khial Said Senior Clerk DHQ Hospital Landi Kotal.
..... Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE IMPUGNED TRANSFER ORDER DATED 9/04/2024
AND ORDER DATED 4/06/2024 PASSED BY THE RESPONDENTS WHEREAS
RESPONDENT NO 2 ON THE BASIS OF FAVORITISM, AND WRONGLY
BROUGHT TO THE POST OF APPELLANT IN VIOLATION OF LAW, RULES,
AND POLICY.

PRAYER IN PLAINT:

On acceptance of this appeal the impugned transfer order dated 9/04/2024
and order dated 16/5/2024 may kindly be set aside being against the law,
without jurisdiction, and arbitrary.

Respectfully Sheweth;

May it please this Honorable Tribunal.

The appellant very humbly seek permission to plead his appeal, as follows

1. That, the appellant is serving in the respondent department as
Senior Clerk and in his own scale and has served quite efficiently
and up to the entire satisfaction of his superiors.
2. That, on dated 5/10/2023 the appellant was transferred to
Government Naseer Uddin Khan Babar Memorial Hospital against
the vacant post of Senior Clerk.
Copy of Transfer Order/ Notification is attached as Annexure A, and Transfer
Charges Certificate is attached as Annexure B.
3. That, vide impugned order dated 9/04/2024 the appellant has been
transferred by the respondent No 2 without any cause and
wrongly adjusted the respondent with malafide intention.
Copy of the impugned order dated 9/04/2024 is attached as Annexure C.
4. That, the appellant filed representation/appeal against the
impugned order before the respondent No 2, which is rejected by
the respondent no 2 vide order dated 4p/6/2024.
Copy of the Appeal and representation is attached as Annexure D.
5. That, the impugned order dated 9/04/2024, and order dated 4p/06/2024
are illegal, without jurisdiction, void abi initio, arbitrary, against
law and facts on the following grounds.

GROUNDS

1. That, the impugned orders are against law, without lawful authority, unwarranted, without jurisdiction, un-constitutional and of no legal effect upon the rights of the appellant.
2. That, the impugned transfer order is malaises, arbitrary, fanciful, posting order based on ill will and inherent biases of the respondents.
3. That, from the bare perusal of the afore mentioned order it is very much clear that the same has not been passed in the exigency of the service, but at the instance of some political person, hence the department adopted pick and choose method and dealing with the appellant in discriminating way, which has no legal sanctity in the eyes of law and this type of practice always condemned by this Honorable Tribunal as well as Apex Courts of the land.
4. That, the transfer order is against the policy relating to the transfer and posting being issued by the Government, the appellant was posted at present place on 5/10/2023 but after 6 months appellant has been transferred vide impugned order according to the transfer policy and judgments of the superior courts transfer of Civil Servant should not be transferred before completion of stipulated period at one station.
5. That, the appellant has been transferred without any reason which is against the transferred policy. Section 24-A of the general clauses Act, 1897 was inserted by an act of 1997, where it has been statutory provided that every public functionary issuing a direction or deciding a case shall exercise the jurisdiction vested in it reasonably, fairly, justly. Reason is the logical conclusion to think, analyze, assess and thus deduct or conclude, it is further provided that the authority, office, or person making any order or issuing any direction give reason for making the order, and Reliance is placed on 2005 MLD 1844. Order of public functionary which does not give reason would not be sustainable in law, which makes it obligatory for public functionary to decide application with reasons. 2004 YLR 521, 2007 SCMR 1759. Requirements of giving reason operates an important check on abuse of power. PLD 2021 Lahore 790.
6. That, the August Supreme of Pakistan has recently been held in case titled Khan Muhammad case reported as 2018 SCMR 1411 that civil servant cannot be transferred without assigning any reason.
7. That, the violation of the prevailing law on the subject point respondents are in utter disregard of the clear and mandatory provisions of Article 4 of the Constitution which provide treatment as per law and not otherwise.
8. That, the appellant has assumed the said post on 5/10/2023, as such the impugned order has been passed in violation of law laid down by the Honorable Supreme Court in Anita Turab Case PLD 2013 SC 195.

9. That, the posting and transfer policy specifically fixes a normal tenure for civil servants, but just in 6 months the appellant was transferred without waiting and allowing him to complete normal tenure as per the law and policy. This Honorable Tribunal in Service Appeal NO 137/2022 titled as Mst Shamshad Bibi vs. Secretary Education etc. held that Tenure was originally created to give teachers academic freedom, Civil servants do not have stability of tenure particularly and specially in the health department where transfers and postings are made frequently at the whims and fancies of the executives head for political and other considerations and not in the public interest, a fixed tenure would only enable Civil servants to achieve their professional targets, but help them function as effective instrument of public policy. Repeated shuffling and transfer of civil servant is deleterious to good governance minimum assured service ensures efficient service delivery, and increase efficiency and Civil Servant can also prioritize various social and economic measures intended to implement for the poor and marginalized sections of society.

10. That, the appellant has no other adequate, prompt and efficacious remedy except to invoke the jurisdiction of this Honorable Tribunal.

11. That, the further legal as well as factual points and grounds will be submitted at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned transfer order dated 9/04/2024 and order dated 14/6/2024 may kindly be set aside being illegal, without jurisdiction, void ab initio, malafide, arbitrary.

Appellant
 Through
 Awais Khan Advocate

Dated 03-07-2024
VERIFICATION

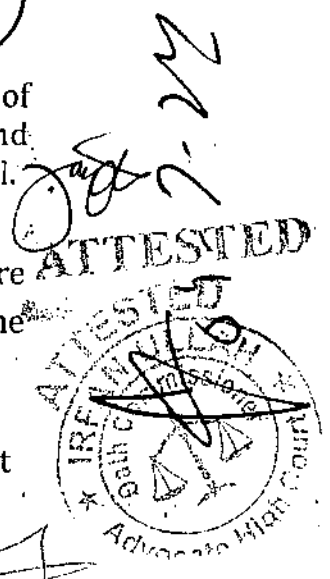
Verified on oath at Peshawar on ^{3RD} of July 2024 that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this learned Tribunal.

CERTIFICATE:

Certified that appeal in hand is 1st one on the subject issue before this Tribunal and no such like appeal has earlier been filed by the appellant on the subject in this hon'ble Tribunal.

Deponent

[Signature]



BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Service Appeal No. _____/2024

Shah Nawaz Khan..... Appellant

Versus

Government of Khyber Pakhtunkhwa and others

..... Respondents

AFFIDAVIT

I, *Shah Nawaz Khan S/o Gula Din R/o Sector E-1, Street No. 9, House No. 280, Al-Haram Model Town, Peshawar*, do hereby affirm and declare on Oath that the contents of the accompanying **Service Appeal** are true and correct and nothing has been concealed from this Hon'ble Tribunal.



Deponent

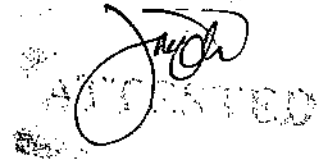
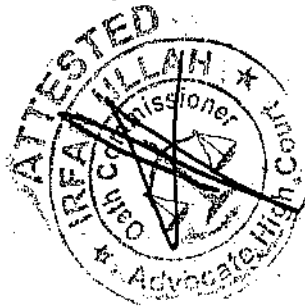
CNIC No. 21203-8709871-3

Cell No. 0307-7174 944

Identified by:

Awais Khan

Advocate High Court



5

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

Service Appeal No. _____/2024

Shah Nawaz s/o Gula Din

R/O Sector E 1, Street No 9, House No 280, Al-Ahram Model Town

Tehsil & District Peshawar.

.....Petitioner

Versus

1. Government of Khyber Pakhtunkhawa through Secretary Health.
2. Director General Health Services Khyber Pakhtunkhawa, Peshawar.
3. Khial Said Senior Clerk DHQ Hospital Landi Kotal.

..... Respondents

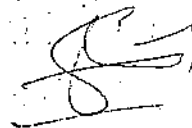
APPLICATION FOR SUSPENSION OF THE IMPUGNED TRANSFER ORDER DATED
9/4/2024 TILL THE FINAL DISPOSAL OF THE INSTANT APPEAL.

Respectfully Sheweth;

May it please this Honorable Tribunal

1. That, the petitioner has filed Appeal as mentioned in which no date of hearing has yet been fixed.
2. That, the contents of the accompanying appeal may kindly be read and considered as an integral part of this application.
3. That, the petitioner has make out a good prima facie case, and in the event of success if interim relief is not granted then he would suffer an irreparable loss, which cannot be physically repaired and nor be adequately compensated.
4. That, balance of convenience lies in favor of the petitioner and he is sanguine in success of his cause, petitioner will suffer more inconvenience.

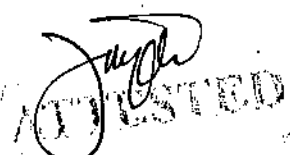
It is, therefore, humbly prayed that on acceptance of this application, interim relief as prayed for in the heading of application may be passed.



Petitioner

Through

Awais Khan Advocate



BEFORE THE CHAIRMAN KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

Service Appeal No. _____/2024

Shah Nawaz Khan..... Appellant

Versus

Government of Khyber Pakhtunkhwa and others

..... Respondents

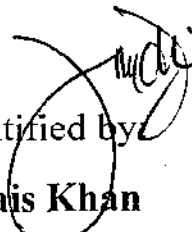
AFFIDAVIT

I, *Shah Nawaz Khan S/o Gula Din R/o Sector E-1, Street No. 9, House No. 280, Al-Haram Model Town, Peshawar*, do hereby affirm and declare on Oath that the contents of the accompanying **Application** are true and correct and nothing has been concealed from this Hon'ble Tribunal.

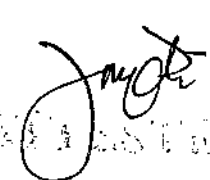

Deponent

CNIC No. 21202-8709871-3

Cell No. 0307-7174944

Identified by 
Awais Khan
Advocate High Court




ATTESTED

Area A
7



**DIRECTORATE GENERAL HEALTH SERVICES
KHYBER PAKHTUNKHWA PESHAWAR**

E-Mail Address: dgshs@kpk.gov.pk Office Ph: 091-9110169 * Exchange: 091-9110187, 9110198 Fax #: 091-9110210

OFFICE ORDER.

Consequent upon their promotion as Senior Clerk BPS-14 on regular basis, Notified vide this Directorate Notification No. 4272-/Ministerial Dated 16/08/2023, the posting / transfer of the following Senior Clerks (BPS-14) (Sub-Cadre) is hereby ordered with immediate effect in the interest of public.

S No.	Name of Official	Current Place of Posting	Proposed Place of Posting	Reference
1	Azmat Ali Shah S/O Rehmat Ali Shah	DHO Office Peshawar	DHO Office Peshawar	Against The vacant Post
2	Sami-ud-Din S/O Shams uddin	DHO Office Peshawar	DHO Office Peshawar	Against The vacant Post
3	Saif ur Rahman S/O Fazal Mehmood	KTH Peshawar	DGHS Office	After one day actualization at SHPD Peshawar against the vacant post of S/clerk
4	Syed Hayat Ali Shah	Services Hospital Peshawar	Services Hospital Peshawar	After one day actualization at SHPD Peshawar against the vacant post of S/clerk
5	Rizwanullah S/O Sahar Gui	MASMH Peshawar	MASMH Peshawar	After one day actualization at SHPD Peshawar against the vacant post of S/clerk
6	Shah Nawaz Khan S/O Gujar Din	DHO Office Khyber	NKBM Hospital	Against The vacant Post
7	Syed Mujahid Shah S/O Syed Gulab Shah	DGHS, Peshawar	NKBM Hospital	Against The vacant Post
8	Daud Khan S/O Muhammad Akbar Khan	DHO Office Khyber	NKBM Hospital	After one day actualization at SHPD Peshawar against the vacant post of S/clerk

Attested

Medical Superintendent
Govt. N.K.B.M Hospital
Peshawar

[Signature]
Attested

136	Muhammad Tariq	DHO Office South Waziristan Lower	DHO Office South Waziristan Lower	Against the vacant post
137	Bashir Ahmad Shah S/O Nazir Ahmad Shah	DHO Office South Waziristan	DHO Office South Waziristan	Against the vacant post
138	Liaqat Ali S/O Abdul Dhayan	SGSM Hospital Peshawar	SGSM Hospital Peshawar	After one day actualization at DHO Office Peshawar against the vacant post of Senior Clerk BPS-14
139	Amir Zeb S/O Muhammad Afzal	Cat-B Hospital Chakdara Dir Lower	Cat-B Hospital Chakdara Dir Lower	Against the vacant post
140	Azmat Ali S/O Salar-e- Room	SGTH Swat	SGTH Swat	Against the vacant post
141	Abdul Ali S/O Badshah Ali	DHQ Hospital Miranshah	DHQ Hospital Miranshah	Against the vacant post
142	Muhammad Siraj S/O Muhammad Akber	Police Services Hospital Peshawar	Police Services Hospital Peshawar	After one day actualization at DHO Office Peshawar against the vacant post of Senior Clerk BPS-14
143	Muhammad Irfan S/O Bashir Ahmad	Bacha Khan Medical College Mardan	DHQ Hosp Mardan	Against the vacant post

The Officials on promotion will remain on probation for a period of one year in term of Section 6 (2) of Khyber Pakhtunkhwa Civil Servant Act 1973 read with rule -15 (i) of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989.

NB: Arrival/departure report should be submitted to this Directorate for record.

Sd-xxx

Director General Health Services
Khyber Pakhtunkhwa Peshawar.

No. 5471-5590 Ministerial Promotion Cell Dated 05/10/2023

Copy forwarded to the:-

1. PA to Secretary Health Department, Peshawar Govt: of Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Deputy Director (Accounts) DGHS Office Peshawar.
4. All District Health Officer Khyber Pakhtunkhwa
5. All Medical Superintendents Khyber Pakhtunkhwa
6. All Hospital Director MTI Hospital Khyber Pakhtunkhwa
7. All District Account Officers Khyber Pakhtunkhwa
8. PA to DGHS Khyber Pakhtunkhwa Peshawar. Officials Concerned
For information and further necessary action.

Attested
Director General Health Services
Khyber Pakhtunkhwa Peshawar

Medical Superintendent
Mardan Hospital
Peshawar

Attest
Dr. [Signature]
Medical Superintendent
[Hospital Name]

[Large handwritten signature]
Attested
Sr. Clerk

Shri. Nand Lal Khan

Date: 5/10/2023

Yours Sincerely
[Signature]

[Signature]

I request you to kindly accept my covering
letter and oblige please.

I have the honor to state that I have
been transferred from DHO Khyber Pakhtunkhwa to NKBM
Hospital under your kind control, vide OHS No. 5471-5590/Ministered
Promotion call dated 5/10/2023.

Subject: Arrived Report.

NKBM Hospital, Peshawar

The Medical Superintendent,

05/10/2023

Page 3

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And - C
to

DIRECTORATE GENERAL HEALTH SERVICES KHYBER PAKHTUN KHWA PESHAWAR

Postal Address: Peshawar office PWA 021-0210300 Exchange: 021-0210182, 0210196 Fax: 021-0210130

OFFICE ORDER

As approved by the competent authority, the following posting/ transfer of Senior Clerks are hereby ordered in the interest of public service with immediate effect:

S.No.	Name of Officials	From	To	Remarks
01.	Mr. Shah Nawaz Senior Clerk	NKBMH Peshawar	DHQ Hospital Landikotal	Vice S.No. 02
02.	Mr. Khial Said Senior Clerk	DHQ Hospital Landikotal	NKBMH Peshawar	Vice S.No. 01

NB: Arrival/ departure report should be submitted to this Directorate for record.

Sd/xxxxxxx

DIRECTOR GENERAL HEALTH
SERVICES, K.P.K PESHAWAR.

Dated 09/09/2024

No. 2324-28/Personnel

Copy forwarded to the:-

1. A.G Khyber Pakhtunkhwa.
2. M.S Govt. Naseerullah Khan Babar Memorial Hospital Peshawar.
3. M.S DHQ Hospital Landikotal.
4. DAO Khyber.
5. Officials concerned.

For information and necessary action.

DIRECTOR (ADMN)
DIRECTORATE GENERAL HEALTH
SERVICES, K.P PESHAWAR.

[Handwritten Signature]

[Handwritten Signature]
08/09/24

Annex D

11

To

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

DAILY NO

DATED

GOVT. NASEER ULLAH KHAN TAJAR
MEMORIAL HOSPITAL, PESHAWAR

407
23/04/2024

Through Proper Channel

Subject: APPEAL FOR CANCELLATION OF TRANSFER ORDER:

R/Sir

Reference Director Admin DGHS letter No.2324-28/Personnel Dated:
09.04.2024.

I have the honour to state that I have recently been promoted from
Junior clerk BPS-11 to Senior Clerk BPS-14 in the month of October
2023 and posted in Govt. NKBM Hospital Kohat road Peshawar, I
shifted my whole family from Landikotal to Peshawar.

In this regard it is stated that neither I have completed my tenure nor
there is any complaint against me, even the MS and all staff of the
Hospital are satisfied from my performance.

Therefore it is most humbly requested that my transfer order may
please be cancelled please.

Yours Sincerely



Shah Nawaz

Senior Clerk NKBM Hospital Peshawar

Date: 23.04.2024

Ectab
for process
Jamshed



12

OFFICE OF THE MEDICAL SUPERINTENDENT
GOVT. NKBM HOSPITAL KOHAT ROAD PESHAWAR



Email: gnkbmhospital@gmail.com

Fax 091-2324611

Tele; 091- 9212742

No. 2160 /NKBMH

Dated: 25/04/2024

To;

The Director General Health Services,
Khyber Pakhtunkhwa, Peshawar.

Subject: **APPEAL FOR CANCELLATION OF OFFICE ORDER:**

R/Sir;

I have the honour to forward & recommend herewith an appeal in original in respect of Mr. Shah Nawaz Khan Senior Clerk BS-14 of this hospital, who has requested for cancellation of his transfer order.

In this regard, it is stated that his transfer order may kindly be reconsidered and allow him to continue his duty at the strength of Government Naseerullah Khan Babar Memorial Hospital Peshawar, as he is hard worker, honest and obedient Senior Clerk of this hospital, who has recently been posted at the strength of Government Naseerullah Khan Babar Memorial Hospital, Peshawar


MEDICAL SUPERINTENDENT


D.G.H.S.

Amare

13

DIRECTORATE GENERAL HEALTH SERVICES

KHYBER PAKHTUN KHWA PESHAWAR



E-Mail Address: awfndgls@kphss.com office Ph# 091-9210269 Exchange# 091-9210187, 9210195 Fax # 091-9210230
No. 2948-491 Personnel Dated: 04/06/2024

To,

The Medical Superintendent
Govt. Naseerullah Khan Babar Memorial Hospital Peshawar

ENTRY NO. 627
DATED: 10/06/2024
GOVT. NASEERULLAH KHAN BABAR MEMORIAL HOSPITAL PESHAWAR

Subject:

APPEAL FOR CANCELLATION OF OFFICE ORDER

Memo

Reference to your letter No. 2160/NKBMH dated 25.04.2024 on the subject noted above.

The request of Mr. Shah Nawaz Senior Clerk for cancellation of his transfer has been considered by the competent authority but it is regretted to be acceded to and he may be directed to obey the orders in letter & spirit.




[Signature]
ADDITIONAL BGT (ADMN)
DIRECTORATE GENERAL HEALTH SERVICES, K.P.K PESHAWAR.

C.C

P.A to DGHS Khyber Pakhtunkhwa.

[Signature]
16/5/24

[Signature]

50	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈریس: <u>Awais Khan</u>	  
بار کونسل ایسوسی ایشن نمبر: <u>bc-13-4196</u>	
رابطہ نمبر: <u>0307-7147862</u>	

بجالت جناب: سر جسٹس ٹریبونل، خیبر پختونخواہ پشاور

مخاطب: <u>شاہ نواز نشان</u>	دعویٰ: <u>Service Appeal</u>
بنام	علت نمبر:
کوٹھنٹ کے پی بی ڈی، سسر ٹریبونل	مورخہ:
	جرم:
	تھانہ:

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام پشاور کیلئے اولسٹران ریڈر رحیل محمد کی طرف سے پیش کی گئی ہے۔ مقدمہ کو مقدمات کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا 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 تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 04/07/2024

العبد گواشد العبد
مقام Peshawar کے لیے منظور ہے۔



شاہ نواز نشان وکیل گلا دین ساکن الحکم ٹاؤن پشاور