Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 770/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.07.2024	The implementation petition of Mr. Javed Khilji submitted today by Mr. Rehmat Khan Kundi Advocate. It is fixed for implementation report before Single Bench at Peshawar on 25.07.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No.770/2024
In
Service Appeal No. 1447/2022

Javed Khilji (Director) Excise, Taxation & Narcotic Control Department Khyber Pakhtunkhwa.

..... **(Petitioner)**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KP, Civil Secretariat, Peshawar & Others.

.....**(Respondents)**

INDEX

S.No.	Description of Documents	Annexure	Pages
1.	**Memo of Execution Petition**		1-3
2.	**Affidavit**		4
3.	**Copy of Grounds of Service Appeal No.1447/2022**	A	5-15
4.	**Copy of Application for correction of Clerical Mistakes**	B	16-17
5.	**Copy of Correction order dated 13.06.2024**	C	18
6.	**Copy of the Judgment dated 15.11.2023 of the Service Tribunal in service Appeal No.1447/2022**	D	19-26
7.	**Wakalat Nama**		27

Petitioner

Through

Rahmat Khan Kundi
Advocate, High Court
Office No. 5, Ground Floor,
Saya Heights, Near Islamia
College BRT, Station,
Peshawar.
Cell # 0346.9773786

Dated: 19/ 07/2024

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 770/2024
In
Service Appeal No. 1447/2022

Khyber Pakhtukhwa Service Tribunal
Diary No. 14455
Dated 23-07-2-24

Javed Khilji (Director) Excise, Taxation & Narcotic Control Department Khyber Pakhtunkhwa.

..... **(Petitioner)**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KP, Civil Secretariat, Peshawar.

2. The Finance Department, Govt. of KP through Secretary Finance, Govt. of KP, Civil Secretariat, Peshawar.

3. The Excise, Taxation and Narcotics Control Department, Govt. of KP through Secretary Excise, Taxation and Narcotics Control Department, Civil Secretariat, Peshawar.

4. Director General, Excise, taxation and Narcotics Control department, Khyber Pakhtunkhwa, Peshawar.

.....**(Respondents)**

EXECUTION PETITION UNDER CLAUSE (d) OF SUB-SECTION 2 OF THE SECTION 7 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR IMPLEMENTATION OF THE CONSOLIDATED JUDGMENT DATED 15.11.2023 PASSED BY THE LEARNED BENCH OF THIS TRIBUNAL IN SERVICE APPEAL NO. 1447/2022 WHEREIN EXECUTIVE ALLOWANCE AT THE RATE OF 150% OF BASIC PAY WAS ALLOWED IN FAVOUR OF THE PETITIONER.

Respectfully Sheweth;

1. **That** the petitioner filed Service appeal No.1447 of 2022 for continuation of executive allowance at the rate of 150% of basic pay before the Hon'ble Service Tribunal Khyber Pakhtunkhwa, Peshawar after exhausting departmental remedy. **(Copy of Service Appeal No. 1446 of 2022 is attached as Annexure A)**

2. **That** the Service appeal No. 1447/2022 was allowed vide Consolidated Judgment dated 15.11.2023; however, there were some typographical/clerical mistakes in the consolidated judgment, therefore, an application for correction of clerical mistakes in consolidated judgment dated 15.11.2023 of service appeal No. 1435/2022 etc. was filed wherein 150% executive allowance in favour of the petitioner was allowed, but instead of 150% allowance inadvertently/mistakenly 1.5% allowance and instead of government exchequer mistakenly government exchange were mentioned in the judgment due to clerical mistakes, the application for correction of clerical mistakes was allowed vide order dated 13.06.2024 with direction to make necessary correction in the judgment with red ink accordingly, hence, the clerical mistakes were corrected. **(Attested copies of application No. 433 and Order dated 13.06.2024 are attached as Annexure B & C)**

3. **That** after the correction of clerical/typographical mistakes in the consolidated judgment dated 15.11 2023 passed by this Hon'ble Tribunal in service appeal No.1435 to 1450 of 2022, the relevant para thereof is reproduced as under.

> **It is evident on record that employees of almost all the department were allowed allowance at the rate of 150% of their basic pay and the appellants were deprived from it, despite the fact that they are revenue generating agency and contributed to government exchequer with their efforts. Therefore, they will have to be treated at par with the employees of others departments. Hence, they may also be given same treatment and allowed any allowance, which the Finance Department deems appropriate to name it. As sequel to above discussion, we are unison to dispose of this appeal as well as connected service appeals on the above terms. Costs shall follow the events. Consign.**

(Attested copy of Judgment dated 15.11. 2023 is attached as Annexure D)

4. **That** after obtaining the attested copy of the judgment of this Hon'ble Tribunal, the petitioner has submitted numerous applications before the respondents for implementation of the judgment of this Hon'ble Tribunal, but till the date no positive action has been taken in reference to the implementation of the judgment dated 15.11.2023 passed this Hon'ble Tribunal.

5. **That** after lapse of six/seven months the aforesaid Judgment has not yet been acted upon and the respondents are reluctant to implement the judgment and using delay tactics amounting to denial of the Judgment.

6. **That** non-compliance of the order of the Hon'ble Court, speaks malafide on the part of respondents and to lower the position of the Judiciary in the eyes of public.

7. **That** from the facts, mentioned above, it has become crystal clear that the Respondents have committed Contempt of Court.

It is therefore, prayed that on acceptance of this Execution petition, the Respondents may graciously be strictly directed to execute/implement the judgment of this Tribunal dated 15.11.2023 in letter and spirit and direct the respondents to grant/give executive allowance at rate of 150% of the basic pay of the petitioner forthwith without any further delay. Similarly, the defaulter may kindly be proceeded under the law of contempt and be punished accordingly.

Petitioner

Through

Rahmat Khan Kundi
Advocate, High Court
Office No. 5, Ground Floor,
Saya Heights, Near Islamia
College BRT Station,
Peshawar.
Cell # 0346.9773786

Dated: 19/ 07 /2024

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No._____/2024

In

Service Appeal No. 1447/2022

Javed Khilji (Director) Excise, Taxation & Narcotic Control Department Khyber Pakhtunkhwa, Peshawar.

..... **(Petitioner)**

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KP, Civil Secretariat, Peshawar & Others.

.....**(Respondents)**

AFFIDAVIT

I, **Javed Khilji (Director)** Excise, Taxation & Narcotic Control Department Khyber Pakhtunkhwa, do hereby solemnly affirm and declare, that the contents of the **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Bul Daraz Khan Oath Commissioner Advocate High Court Peshawar

Deponent
CNIC No. 16102-1501636-5
Cell No. 0334-9338515

Identified By:

Rahmat Khan Kundi
Advocate High Court (S)

(5)

Annexvre "A"

IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 1447 /2022

Javed Khilji (Director Malakand Region) Excise, Taxation & Narcotics Control Department.

.....Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.

2. The Finance Department, Government of Khyber Pakhtunkhwa.
Through Secretary Finance, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

3. The Excise, Taxation & Narcotics Control Department, Government of Khyber Pakhtunkhwa.
Through Secretary Excise, Taxation & Narcotics Control Department, Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

4. Director General Excise, Taxation & Narcotics Control Department,

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDERS NO.SOSR-IV/FD/1-13/2021/E&TD DATED 15.08.2022, WHEREBY ILLEGALLY AND UNLAWFULLY, THE APPELLANT HAS BEEN DEPRIVED OF THE EXECUTIVE ALLOWANCE @150% AND DIRECTIONS OF RECOVERY ARE ALSO GIVEN ILLEGALLY AND WITHOUT LAWFUL AUTHORITY BY THE RESPONDENTS.

Respectfully Submitted:

The Appellant is working against the designations mentioned in the heading of the petition in the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department. The Appellant is a Civil Servants, and is before this Honorable Tribunal for the redress of his grievance in respect of the illegal actions of the respondents in taking away the due right of Executive Allowance @150% from the appellant in negation of the law vide NO.SOSR-IV/FD/1-13/2021/E&TD dated 15.08.2022. He thus approach this honorable tribunal for the redress of his grievance in respect of the afore-mentioned illegal acts, with the Facts and Grounds enumerated hereinafter.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

Brief Facts:

1. That the Appellant is a bonafide law-abiding resident of Khyber Pakhtunkhwa, and being citizen of Pakistan, entitled to all the constitutional guarantees including but not limited to the fundamental rights of life, freedom of trade, due process as well as the right of non-discrimination. He is an officer of the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department and were duly appointed pursuant to advertisement, competitive examinations, psychological evaluation, and interviews.

   Copies of the appointment order is Annex-A.

2. That the Respondents regulate the services of all the Civil Servants including the Appellants under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973 whereunder the Khyber Pakhtunkhwa Civil Servants Act 1973 is enacted. The said Act regulates the appointment of persons and their terms and conditions of service in relation to the service of Khyber Pakhtunkhwa. That the service structures of various departments of the Government of Khyber Pakhtunkhwa are dealt with under Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. That as per the Khyber Pakhtunkhwa PCS Rules 1997, Extra Assistant Commissioners (EACs), Excise and Taxation Officers (ETO), Section Officers (SO) and Deputy Superintendent of Police (DSP) were the groups selected through combined Competitive examination. Subsequently the DSPs were encadered in Police Service of Pakistan (PSP), the SOs and EACs were encadered in Provincial Management Service (PMS) leaving aside the ETO's, who are ironically still appointed through the PMS Syllabus appended to the PMS Rules 2007 in its Schedule. That it is also imperative to note that the initial recruitment in Excise, Taxation & Narcotics Control Department as Assistant Excise & Taxation Officer in BPS-17 is done through competitive examination under the PMS Rules, 2007. The advertisement, syllabus, examination, interviews, psychological evaluation and even trainings are the same.

4. That the Constitution has conferred upon the Provincial Government the powers to make Rules under Article-139(3) for the allocation and transaction of business of the Provincial Government. While exercising that power the Government of Khyber Pakhtunkhwa has framed the Khyber Pakhtunkhwa Government Rules of Business-1985 ("Rules of Business").

   "Rule-2(h) of the Rules of Business defines Department as a self-contained Administrative Unit in the Secretariat responsible for the conduct of business of the Government in a distinct and specified sphere and declare as such by the Government."

   Similarly, the Attached Department has also been defined under Rule-2(b) of the Rules of Business as:

   A Department mentioned in the Column-3 of the Schedule-I. The Schedule I tabulates the Administrative Departments, Attached Departments and Heads of the Attached Departments.

(7)

Rule-3(3) read with Schedule-II of the Rules of Business, provides for the distribution of business of the Provincial Government amongst the Departments.

5. That the appellant is Officer of the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department, Government of Khyber Pakhtunkhwa serving in BPS-18 and above. They are Provincial Civil Servants within the meaning of Section-2(1)(b) of the Act of 1973. The Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department under the Rules of Business is implementing wing of the Administrative Department in as much as all the Policies, Rules and Regulations of the Administrative Department are being implemented through the Khyber Pakhtunkhwa Excise, Taxation and Narcotics Control Department and its Officers i.e., Appellants.

6. That for a variety of reasons including high rate of inflation, depreciation, cost increase, high taxation rate, the Provincial Government through Finance Department sanctioned various allowances i.e. Executive/Performance/Technical/Professional Allowances on various scales per month to the Civil Servants belonging to various cadres. Consequently, vide Notification dated 02.02.2018, the PAS/PCS/PMS Officers in BPS-17 to BPS-21 working on scheduled posts of the Establishment and Administration Department were allowed Executive Allowance to the tune of 1.5 of the initial Basic Pay per month. This was followed by another Notification dated 02.08.2018 whereby another allowance called the Scheduled Post Allowance was allowed to Police Officers of Police Department (an Attached Department of Home & Tribal Affairs Department) serving in BPS-17 to BPS-21 @1.5 of the initial basic pay per month by the Finance Department, Government of Khyber Pakhtunkhwa. Again vide Notification dated 19.10.2018, the Finance Department, Government of Khyber Pakhtunkhwa sanctioned Technical Allowance to Engineers (Attached Department Officers) serving in only four Departments in BPS-17 to BPS-20 @1.5 of the initial basis pay. Similarly, by means of another Notification dated 11.11.2019, the Planning Cadre Officers serving in BPS-17 to BPS 20 working against the sanction strength of the P&D Department were sanctioned Planning Performance Allowance to the tune of 1.5 of the Basic Pay. Likewise, the Doctors (Attached Department Officers) were also allowed similar Allowances on various scales called the Health Professional Allowance as is evident from the Notification dated 07.01.2016.

Copy of the Notifications are Annex-B

7. That on 07-07-2021 Executive Allowance @150% was granted by the Provincial Government to PAS, PCS, PMS officers. The appellant being PCS qualified officers was started with the payments of the Allowance, without the appellant ever applying for the allowance. This continued without any gap, however out of the blue the allowance was stopped in May 2022, whereafter on 01-06-2022, the appellant made a due representation.

Copy of the Notification dated 07-07-2022 is Annex-C

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Copy of the representation is Annex-D.

8. That comments of the Administrative Department were asked by the Finance Department on the representation of the appellants, which were duly furnished vide No. SO(Admn)/E&T/1-82/2020 dated 17-06-2022 and it in unequivocal terms agreed with the plea of the appellants. The comments also mention that the department is a revenue generation source and therefore entitled to the allowance on that score also.

Copy of the comments is Annex-E.

Copy of the 5 years recovery chart is Annex-E/1.

9. That the Finance Department vide 15-08-2022 (NO.SOSR-IV/FD/1-13/2021/E&TD) regretted the said representation despite the favorable comments of the Excise Department. The said regret was received in the Excise Department on 17-08-2022 and delivered to the appellants on 19-08-2022. With the regret a heavy financial disparity has been caused due to the allowances mentioned above. Also, the regret letter concedes that the allowance was granted due to "irregularity", which is preposterous. The appellant never applied for it, rather were given the allowance based on the fact that they have "literally" the same set standards of induction rules/advertisement/interviews/training to the PMS Counterparts. Also, they are a revenue generation source, which entitles them to the Executive Allowance and by no means disentitles them to the same, and in no space "made them liable" for recovery.

Copy of the regret is Annex-F.

10. That a summarized picture of Allowances offered to various civil servants under the Act of 1973 is tabulated below to highlight the position before the Hon'ble Tribunal:-

S, No	Appointment Terms & Conditions as per the Civil Servants Act, 1973	Allowances	Strength
1	Pakistan Administrative services(PAS), Provincial Management Services (PMS) (Formerly PCS-EG/PCS-SG)	Performance/ Executive Allowance equal to 150%	1500
2	Provincial Planning Service PPS (former Non-Cadre Service)	Planning Performance Allowance equal to 1.5 Basic Pay/Month	300+

ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

3	Engineers of C&W, PHE, LG&RDD and Irrigation Departments)	Technical Allowance equal to 1.5 Basic Pay/Month	600+
4	Police Officers BPS-17 to BPS-21 of the Police Department	Scheduled Post Allowance equal to 1.5 of the initial Basic Pay/Month	650+
5	ETO's	Allowance @150% discontinued	18

Thus the Appellants have been highly discriminated in the matters of financial benefits.

11. That it is bearing in mind the afore-mentioned that the Appellant being aggrieved of discriminatory treatment meted out to Appellants and having no other adequate and efficacious remedy after the regret, file this appeal inter-alia on the following grounds:

Grounds.

a. Because Fundamental Rights of the Appellant specifically those mentioned in Article 4, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan 1973 are being violated by the Respondents in taking away the due right of allowance from the Appellants, while it is extended to others. The Honorable Supreme Court of Pakistan in 1991 SCMR 1041 (J.A. Shirwani Case) clearly bestowed the enforcement of the fundamental rights on the Tribunal.

b. Because Article 38(e) of the Constitution of Islamic Republic of Pakistan, 1973 is specifically being made redundant through the acts of the respondents who have made the already pending disparity of the Appellants and their cadre even further sink to the bottom of the deepest oceans, with no hopes of any redress. To remove disparity and ensure wellbeing of the people is the responsibility of the state, which in turn would eliminate the inequality in income and earning of individual including persons of various classes similarly placed as laid down in 2001 SCMR 1161, 2003 CLC 18, and 2019 PLC (CS) 238 (relevant para 12 & 13).

c. Because vested rights of the appellant are created, which cannot be done away with, due to the whims and wishes of anyone. Per the principles of Locus Poenitentiae, the recovery and non-continuation of the allowance are both illegal and unlawful and cannot be allowed to proceed. These principles are enunciated in 2004 SCMR 1864 (relevant Para 7), 2020 PLC (CS) 1378 (relevant para 10),

2020 SCMR 188 (relevant Para 4), and 2018 SCMR 691. The case of the appellant on the touchstone of the above-refereed precedents is one of straight out violation of the dictum of the Apex Court.

d. Because Respondents have not treated Appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully ignored to remove disparity in earnings of the Appellants as compared to the other counterparts, which is unjust, unfair and hence not sustainable in the eye of law.

e. Because the Notification issued by the Finance Department Notification vide No. FD(SOSR-II)2-5/20121-22(Executive Allow) dated 07-07-2021, in clear and unequivocal terms, entitles all PCS/PMS officers working in the Government of Khyber Pakhtunkhwa, without any differentiation whether they are from PCS executive, PCS Police, PCS, PCS secretariat or PCS Excise.

f. Because the legal principal **"Audi alteram partem"** meaning 'hear the other side', or 'no man should be condemned unheard' or 'both the sides must be heard before passing any order', the maxim itself says no person shall be condemned unheard. Hence, no case or judgment can be decided without listening to the point of another party. This principle same was established by the august Supreme Court in **Civil Petition No. 279-P/2015**. The relevant portion of the Judgment is produced as under, for ready reference;

> "Any proceeding arising out of the equity cannot be decided without providing opportunity of hearing. The learned High Court ought to have followed the principle of audi alteram partem and due process, which are basis of administration of justice, especially when any order, if passed, might affect the rights of the entity not party to the proceedings.
> For what has been discussed above, we convert this petition into appeal, allow it, set aside the impugned judgment and remand the case back to the learned High Court for a decision afresh after affording opportunity of hearing to all concerned strictly in accordance with law."

g. Because the Honorable Supreme Court of Pakistan has held in 2018 SCMR 691 that right once vested cannot be taken back in respect of allowances in the following terms:

> "As a secondary and also tenuous argument, learned Deputy Attorney General contended that the Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time. That is clearly a flawed contention. It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Governme
> The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them. In se

ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

circumstances, the executive is barred by the rule of locus poenitentiae from unilaterally rescinding and retrieving the benefit availed by its recipients. Reference is made to Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer-in-Chief Branch v. Jalaluddin (PLD 1992 SC 207). Therefore, without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action."

h. Because the appellant also place reliance upon the dictum laid in respect of accrual of a right, which cannot be unilaterally taken back. The same is reported as PLD 2021 SC 320, and relevant portion reads as:

"Otherwise the case of the respondent is also covered by section 24-A of General Clauses Act, 1897, which clearly reflect that once a right is accrued, the same cannot be withdrawn unless and until it is established that the scheme was obtained by practicing fraud or misrepresentation. Section 24-A of the General Clauses Act, 1897, is reproduced as under -

"24-A. Exercise of power under enactments.-

(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so for as necessary or appropriate give reasons for making the order or, as the case made be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially."

The contention of the learned counsel for the respondent that the doctrine of promissory estoppel is squarely applicable has force. It is well settled that where the Government control functionaries make promise which ensues a right to anyone who believes them and acts under them, then those functionaries are precluded from acting detrimental to the rights of such person/citizen. Otherwise the case of the respondent is also hit by doctrine of "legitimate expectation". Justice (Retired) Fazl Karim, in his book, "Judicial Review of Public Actions" at page 1365 has equated the aforesaid doctrine to the "fairness" and equity which is legitimate attribute of a public functionary. The relevant passage reads like this:-

"The justification for treating "legitimate expectation" and 'promissory estoppel' together as grounds for judicial review is, one, that they both fall under the general head 'fairness', and too, that 'legitimate expectation' is akin to an estoppel."

This very doctrine has a history of appreciation by this Court in various judgments including (1986 SCMR 1917) "Al-Samrez Enterprise v. The Federation of Pakistan" wherein it is held as under:-

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

> "It is a settled rule that an executive authority cannot in exercise of the rule-making power or the power to amend, vary or rescind an earlier order, take away the rights vested in the citizen by law."

i. Because the claim of the appellant also holds force and draws wisdom from the judgment of the Honorable Lahore High Court in **2020 P L C (C.S.) 1378,** which relevant portion reads as:

> "Once a right had been created by extending benefit after complying with codal formalities then same could not be destroyed or withdrawn--Constitutional petition was allowed."

j. Because the case of the appellants is further strengthened by the dictum of honorable Lahore High Court reported as **2010 P L C (C.S.) 652,** which held as:

> "Withdrawal of special allowance allowed to the employees---Grievances urged by the petitioners were that one month running pay allowed to them had been withdrawn by the authorities in view of the risk allowance salary package of the Punjab Police--Petitioners had been allowed special allowance of one month additional basic pay in addition to their pay---Same was allowed as incentive given to all the Police Prosecutors working as DSP Legal and Inspector Legal; and the same had duly been paid to the petitioners---Enhancement in the salaries of the Police Officials through special package was introduced to rationalize disparity in the salaries of various units, ranks of the Police and to bring same at par with the salary of Islamabad and Motorway Police ---From the order whereby benefits were withdrawn it was quite obvious that special incentive allowance offered to the petitioners of one additional basic pay scale per month had not been withdrawn and the petitioners could not be deprived of the said special allowance---Petitioners, in circumstances were entitled to the same---Authorities were directed by High Court to allow the payment of special allowance to the petitioners; arrears should also be paid to them; and if any recovery had been made same be reimbursed."

k. Because the Objective Resolution which in pursuance of Article 2-A is now a substantive part of the Constitution, provides for equality, social justice as enunciated by Islam and guarantees Fundamental Rights and before law, social economic and political justice etc. The very scheme of Constitution castes a bounden responsibility on all and sundry about the equality and equal protection of law. Viewed from this angle the refusal on the part of the Respondents to equalize the position of Appellants with other similarly placed persons is an affront to the Resolution referred above and hence not sustainable.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

l. Because the principles of legitimate expectancy, which has time and again been reiterated to be one of the cardinal principles in respect of services laws by the

Apex court and recently in 2022 SCMR 694, has been untowardly shattered by the actions of the respondents. Appellant has the legitimate expectancy to be granted to the Executive allowances and cannot be denied the same, merely at the whims and wishes of the respondents, who are committing illegalities one after another to the detriment of the highest revenue generating department of the province.

m. Because the principles of Equality and Non-Discrimination are attracted which have been duly explained in PLD 1957 SC 157, PLD 1990 SC 295, PLD 2003 SC 163, PLD 2005 SC 193, and other judgments also lay down the same principles, which are attracted in the case of the appellants.

n. Because as mentioned earlier, the competitive exam for PMS/PCS and ETOs was and still is one and the same. It was and is based on the same syllabus, same papers, same exam and even the same result, interviews, psychological assessment and training, still the officers in the Excise & Taxation Department are being treated differently from other PMS Officers in terms of being granted allowances. The officers despite being tested and trained alongside their PMS counterparts are not given the same allowances, is an abomination per Article 25 of the Constitution of the Islamic Republic of Pakistan. The case is also made out from dictums laid in 2019 PLC (CS) 238, 2015 PLC (CS) 682, 2014 PLC (CS) 1392, 2016 PLC (CS) 491, 2015 PLC (CS) 682, and 2019 PLC (CS) 1231. Under the dictum laid in 2009 SCMR 1 wherein it has been laid down that "when a Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of the civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rules of good governance demand that the benefits of the decision be extended to the other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other forum." the benefit must be extended to the appellants.

o. Because the cases of Appellant and that of PMS officers working in Attached Departments and/or Administrative Departments to whom the subject benefit has been extended are similarly placed and positioned serving in identical circumstances under the same Government within the same framework, therefore, Appellants cannot be treated with a different yardstick and are thus also entitled to the allowance on the analogy of Officers referred to hereinabove. The conduct of the Respondents as such mingates against Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

p. Because if the PMS Officers can be granted 150% of the basic pay as Executive Allowance, when they are so many in number, why the appellants who are a total of 18 in number denied the benefit of the same.

q. Because the Administrative Department does not function in isolation and is wholly dependent upon its Attached Departments and the officers of the Administrative Departments are posted in the Attached Departments frequently. Moreover, during the posting of the officers of the Administrative departments in Attached Departments, they receive 1.5 Basic Pay Allowance which is not

ATTESTED

Service Tribunal
Peshawar

permissible to the officers of the same Attached Departments thus disparity and discrimination exists in terms of allowances to the officers of the same caliber despite having same terms and conditions as decided by the competent authority.

r. Because under Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973 if any law, any custom or usage having the force of law if repugnant to the Fundamental Rights is void to the extent of its inconsistency and State has been prohibited from making law which takes away or abridges such rights. Article 25 dictates that all are equal before law and entitled to equal protection of law which is also the basic concept of Islam under which all persons similarly placed in similar circumstances must be treated alike and when certain rights were made available to one or more persons similarly placed then all such persons similarly placed with them would stand entitled to such rights. Thus in this backdrop of the matter Appellants have been highly discriminated ins much as the classification is not based upon reasonable and intelligible differentia and therefore, the acts and actions of the Respondents militate against the concept of equality and equality in service as enshrined in Articles-25&27 of the Constitution of Islamic Republic of Pakistan, 1973

s. Because in the same sequence the Principles of Policy incorporated in Chapter-2 of the Constitution which have also been made the responsibility of each Organ and Authority of the State to act upon it in so far as the same relate to the functions of the organs or authority, directs for the discouragement inter-alia of the Provincial prejudices amongst the citizens; the promotion with special care of the educational and economic interest of the backward classes; for promotion of social justice and for the eradication of social evils; the promotion of social and economic wellbeing of the people including equality in earnings of individuals in various classes of the service of Pakistan.

t. Because the Rules of Business of Khyber Pakhtunkhwa Government have been washed down the drain by the Respondents with no regard for the law.

u. Because the Appellant cannot be made to suffer for no fault of their own, that too in an arbitrary and illegal manner, wherein all the norms of natural justice have been flouted, the law ignored, rules violated with the sole intention of depriving the Appellants from their lawful share in allowances.

v. Because there have been no complaints against the Appellant in the performance of their duties, in case there are any delinquents (which there are none in the Appellants, all having spotless careers) there is proper mechanism for proceeding against them. Yet for no fault of the Appellant or the employees of the department, the entire departmental staff is being made to suffer and deprived of their vested interests.

w. Because there is evident discrimination in respect of pays and allowances. Despite being the highest revenue generating and collecting department, pays and allowances are not even compatible with other government departments. And Because Finance Department is not competent to declare who is and who is not PMS officer.

ATTESTED

x. Because other grounds exist which shall be raised at the time of arguments with the permission of this Honorable Court.

Prayer:

It is therefore most humbly prayed that on the acceptance of this Appeal, may it please this Honorable Tribunal to:

a. Declare that the actions of the respondent (Finance Department) dated 15-08-2022 (NO SOSR-IV/FD/1-13/2021/E&TD) by virtue of which the Finance Department regretted the representation of Appellants despite the favorable comments of the Excise Department to be arbitrary, illegal, unlawful and without any jurisdiction.
b. Declare further that the discontinuation of the Executive Allowance @150% to be illegal, unlawful and without any authority vested in the Finance Department.
c. Declare that the recoveries affected from the appellants to be illegal and unlawful and without any jurisdiction.
d. Direct that the Executive Allowance @150% be continued to the appellants forthwith with all arrears and restrain the department from taking any further arbitrary decisions against the appellants.
e. Grant any other relief that this Honorable Tribunal may deem fit and appropriate in the circumstances of the case.

Interim Relief:

It is most humbly requested that pending the instant appeal, no recoveries be affected from the appellants and furthermore, the Executive Allowance be directed to be continued till the final decision of the appeal.

Appellant

Through

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ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

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(16)

Annexure 'B'

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

MISC Application No. 433 /2024
In
Service Appeal No. 1435/2022

Sufyan Haqani (Director Peshawar Region) Excise, Taxation & Narcotic Control Department Khyber Pakhtunkhwa, Peshawar.

..... **(Petitioner)**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Govt. of KP, Civil Secretariat, Peshawar.
2. The Finance Department, Govt. of KP through Secretary Finance, Govt. of KP, Civil Secretariat, Peshawar.
3. The Excise, Taxation and Narcotics Control Department, Govt of KP through Secretary Excise, Taxation and Narcotics Control Department, Civil Secretariat, Peshawar.
4. Director General, Excise, taxation and Narcotics Control department. .....**(Respondent)**

APPLICATION FOR CORRECTION OF CLERICAL MISTAKES IN CONSOLIDATED JUDGMENT DATED 15.11.2023 OF SERVICE APPEAL NO. 1435/2022 WHEREIN 150% ALLOWANCE IN FAVOUR OF THE PETITIONER WAS ALLOWED, BUT INSTEAD OF 150% ALLOWANCE INADVERTENTLY/ MISTAKENLY 1.5% ALLOWANCE AND INSTEAD OF GOVERNMENT EXCHEQUER MISTAKENLY GOVERNMENT EXCHANGE WERE WRITTEN/MENTIONED IN THE JUDGMENT DUE TO CLERICAL MISRTAKES.

Respectfully Sheweth:

1. **That** the above mentioned service appeal has already been decided by this Hon'ble court vide judgment dated 15.11.2023, but there are some clerical mistakes which is liable to be rectified.

FILED

(2) (17)

2. **That** there are clerical mistakes in consolidated judgment dated 15.11.2023 of service appeal no 1435/2022 wherein 150% allowance in favour of the petitioner was allowed, but instead of 150% allowance inadvertently / mistakenly 1.5% allowance and instead of government exchequer mistakenly government exchange was written/mentioned in the judgment due to clerical mistakes, which need to be rectified. **(Copy of Service Appeal No. 1435/2022 and Judgment dated 15.11.2023 is attached as Annexure A & B)**

3. **That** there is no legal bar on acceptance of this application.

It is, therefore, most humbly prayed that on acceptance of this application, the above mentioned clerical mistakes in the consolidated judgment dated 15.11.2023 of service appeal No. 1435 may kindly be corrected/ rectified in the fair administration of justice.

Petitioner

Through

ATTESTED

Rahmat Khan Kundi
Advocate High Court,
Peshawar.

(18) Annexure "C"

13.06.2024 1. Learned counsel for the applicant present. Mr. Asif Masood Shah, Deputy District Attorney alongwith Miss. Parkha Aziz Khan, Legal Advisor for the respondents present.

2. Through the instant misc. application the applicant is seeking correction in the judgment, which was decided on 15.11.2023. Record transpired that the concerned Service Appeal bearing No. 1435/2022 wherein respondents were directed to treat the appellants at par with those employees to whom "150%" Executive Allowance was allowed but instead of "150%" inadvertently "1.5%" was written and the word government "exchequer" was mistakenly written as government "exchange" in the judgment. This Tribunal, within the meaning of Sub-Section 2 of Section-7 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, is deemed as civil court under the Code of Civil Procedure, 1908. Section-152 C.P.C provides for amendment of the judgment, decree or errors, arising therein from any accidental slip or omission, that may, at any time, be corrected by the court either of its own motion or on the application of any of the parties. In the present case, the remaining judgment is correct but inadvertently "1.5%" was written instead of "150%" and the word government "exchequer" was mistakenly written as government "exchange" in the judgment as a typographical mistake, which is an accidental slip. Therefore, office is directed to make necessary correction in the judgment with red ink accordingly. This order, alongwith application of the applicant seeking said correction, be placed on file of Service Appeal No. 1435/2022 and judgment after correction be again scanned. Consign.

(Farecha Paul)
Member (E)

(Rashida Bano)
Member (J)

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(19)

Annexure "D"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1435/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Sufyan Haqqani, (Director Peshawar Region), Excise, Taxation & Narcotics Control Department Khyber Pakhtunkhwa, Peshawar.
.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Finance Department, Civil Secretariat Peshawar.
3. The Excise and Taxation & Narcotics Control Department, Government of Khyber Pakhtunkhwa Peshawar.
4. Director General Excise, Taxation & Narcotics Control Department.
.... (*Respondents*)

Mr. Gohar Ali Durani
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.06.2020
Date of Hearing.....15.11.2023
Date of Decision.....15.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayers copied as below:

"Declare that the actions of the respondents dated 15.08.2022 by virtue of which the Finance Department regretted the representation of appellants despite the favorable comments of the Excise Department to be

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(20)

arbitrary, illegal, unlawful and without any jurisdiction."

"Declare further that the discontinuation of the Executive allowance 150% to be illegal, unlawful and without any authority vested in the Finance department"

"Declare that the recoveries affected from the appellants to be illegal and unlawful and without any jurisdiction"

"Direct that the Executive Allowance 150% be continued to the appellants forthwith with all arrears and retrain the department from taking any further arbitrary decisions against the appellants"

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (1) Service Appeal No. 1436/2022 titled "Sufian Haqqani Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others"(2) Service Appeal No. 1437/2022 titled "Sufian Haqqani Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (3) Service Appeal No. 1438/2022 titled "Dr. Eid Badshad Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (4) Service Appeal No. 1439/2022 titled "Faisal Khurshid Burki Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (5) Service Appeal No. 1440/2022 titled "Said Ul Amin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (6) Service Appeal No. 1441/2022 titled "Saim Jhangra Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (7) Service Appeal No. 1442/2022 titled "Masaud Ul Haq Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (8) Service Appeal No. 1443/2022 titled "Fawad Iqbal Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (9) Service Appeal No. 1444/2022 titled "Fazal Ghafoor Vs

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(21)

.Government of Khyber Pakhtunkhwa through Chief Secretary and others" (10) Service Appeal No. 1445/2022 titled "Tariq Mehsud Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (11) Service Appeal No. 1446/2022 titled "Salah Ud Din Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (12) Service Appeal No. 1447/2022 titled "Javed Khilji Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (13) Service Appeal No. 1448/2022 titled "Andaleep Naz Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (14) Service Appeal No. 1449/2022 titled "Rehman Uddin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" (15) Service Appeal No. 1450/2022 titled "Imad Uddin Vs .Government of Khyber Pakhtunkhwa through Chief Secretary and others" as in all these appeals common questions of law and facts are involved.

3. Brief facts of the case, as given in the memoranda of appeal are that the appellant applied to the post of in light of advertisement issued by Public Service Commission. Appellants meet the criteria of competitive examination, interview and psychological evaluation like PMS & PAS officer and thereafter also complete training like them spread upon period of eight months. That appellants were allowed executive allowance by the government like other PMS Officers but same was stopped by respondents which was not in accordance with law and rules on the subject. It is contention of the appellant that they were not treated in accordance with law; appellant are also Public Service Commission qualified officers; who were appointed upon recommendation of Public Service Commission after going through the standard set by the Public Service Commission like PAS & PMS

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(22)

officers to whom executive allowance was given by the government. They contended that appellants had never applied for the executive allowance but when the same was given/allowed to them so that created rights in favour of the appellants and now asking for recovery from the appellants by the Finance Department was unjustified. They also contended that appellant were revenue generating agency and contributed to the Government exchequer, therefore, they ere entitled for the same which were unlawfully stopped/from him. Appellants applied to the authority who turned down their request, hence, the instant service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellant had not been treated in accordance with law and rules. Article 4, 9, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 were being violated by the respondent department in taking away the due right of executive allowance from the appellants, while extended to others. He further argued that the vested rights of the appellants were created, as it was allowed to the appellant by respondents at their own, which could not be done away with, due to the whims and wishes of anyone as per principle of *locus poenitentiae*, the recovery and non-continuation of the allowance were both illegal and unlawful and could not be allowed to proceed. He further contended that Finance Department Notification dated 07.07.2021 was in clear and unequivocal terms, entitlement to all PCS/PMS officers working in the Government of Khyber Pakhtunkhwa without any differentiation whether they were from PCS Executive, PCS Police, PCS

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(23)

Secretariat or PCS Excise. He further argued that appellants were Public Service Commission qualified officer who had passed the exam with same syllabus and gone through eight weeks training like PCS executive therefore, they were rightly given earlier this allowance and requested for its continuation.

6. Conversely, learned Deputy District Attorney for the respondents contended that Establishment and Excise Department are two different departments having different cadre and set of rules, standard of induction, method of recruitment and promotion. He further contended that Excise department is governed by its own set of rules 2018 and PMS runs under 2007 rules and its parent department Establishment& Administration Department having different nomenclature, schedule, promotion, training and induction method. If directorate of Excise, Taxation has not its own syllabus of training Module, then they should frame its own syllabus & Training Module. He further submitted appellants are not covered under the provision of Finance Department notification dated 15.08.2022 Excise Directorate are not covered under the provision of the Department's notification as they are neither PAS, PCS, PMS Officers nor posted against the scheduled posts but are inducted through Khyber Pakhtunkhwa Public Service Commission as ETOs.

7. Perusal of record reveals that appellants are the employees of Excise, Taxation and Narcotics Control Department, who were duly appointed as their posts were advertised by the Public Service Commission in the light of which they applied for it and appeared in the competitive examinations, interview and after psychological evaluation they were appointed, who were later on promoted as Director. The service structure of various departments of the Khyber Pakhtunkhwa, including the appellant and PMS Officers is governed and regulated by the Khyber Pakhtunkhwa Civil Servant Act, 1973 and appellant also went through the same process of recruitment in BPS-17

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(24)

like PMS officers in accordance with PMS Rules 2007 i.e advertisement, syllabus, examination, interview, psychological evaluation and even training are the same. Rule-2(h) of the Rules of Business 1985 defines Department as a self-contained Administrative Unit in the Secretariat responsible for the conduct of business of the Government in a distinct and specified sphere and is declared as such by the Government. Similarly, the Attached Department has also been defined under Rule-2(b) of the Rules of Business as:

A Department mentioned in the Column-3 of the Schedule-I. The Schedule-I tabulates the Administrative Departments, Attached Departments and Heads of the Attached Departments.

Rule-3(3) read with Schedule-II of the Rules of Business, provides for the distribution of business of the Provincial Government amongst the Departments. Provincial Government through Finance Department sanctioned various allowances i.e Executive/Performance/Technical/Professional Allowance for various cadres. Similarly Finance Department, through notification dated 02.02.2018, allowed executive allowance at the rate of 1.5 of initial basic pay per month to the PAS/PCS/PMS officers in BPS-17 to BPS-21 working on scheduled post of the Establishment and Administration Department vide other notification dated 02.08.2018 scheduled post allowance was allowed to Police Officers of the Police Department to Officer of BPS-17 to BPS-21 at the rate of 1.5 initial basic pay per month. Finance department, through yet another notification dated 19.10.2018, allowed technical allowance to the Engineers serving in only four department in BPS-17 to BPS-21 @1.5 of initial basic pay. Similarly vide notification dated 11.11.2019 the planning cadre officer BPS-17 to BPS-20 were allowed planning performance allowance at a same rate and doctors are also allowed of Health professional allowance at the rate of 150% to PAS, PCS, PMS officers. The appellants

ATTESTED

Examiner
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

being Public Service Commission qualified officers were started payments of the allowance without any request by the appellant for it. This allowance was given to the appellants till April, 2022 and thereafter it was stopped in May, 2022 upon which appellants filed departmental representation to respondent on 01.06.2022. Although Administrative Department in their comments upon representation of appellant to the Finance Department fully endorsed the appellant's plea and recommended for continuation of allowance but the Finance Department, vide order dated 15.08.2022 regretted representation of the appellant and also ordered for recovery of the amount paid to appellants. It is alleged by the appellants that regretal of appellant's representation by the Finance Department caused disparity and it was discrimination with the appellants. Recovery of the paid amount from the appellants was against the law as appellants never applied for that and it was stated to them by the department itself, which was termed by the Finance Department as irregularity. Appellant alleged that they were not treated in accordance with law.

8. Main contention of the appellants is that they are entitled for executive allowance at the rate of 150% (1.5%) of initial basic pay because they entered into service after going through the same procedure, method of recruitment, through which PMS, PCS and PAS officers are recruited i.e advertisement by the Public Service Commission of the post, competitive written examination in eight similar subjects rather in same subjects/syllabus, psychological evaluation and interviews followed by same training modules of eight months. Appellants exam were conducted under PMS Rules 2007. The other contention is that they were discriminated and were not equally treated as almost all the cadre/department/employees and officer were allowed allowance but the appellants are deprived from it, which created disparity and injustice.

9. Scheduled post by the government is one which is specifically mentioned

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(26)

in scheduled appended with provision PMS Rules 2007. The post of the appellants are not mentioned in it and appellants are working under Excise Department which is a different department than Establishment Department.

10. It is evident on record that employees of almost all the departments were allowed allowances at the rate of 150% 1.5% of their basic pay and appellants were deprived from it, despite the fact that they are revenue generating agency and contributed to government exchequer exchange with their efforts. Therefore, they will have to be treated at par with the employees of other departments. Hence, they may also be given the same treatment and allowed any allowance, which the Finance Department deems appropriate to name it.

11. As a sequel to above discussion, we are unison to dispose of this appeal as well as connected service appeals on the above terms. Cost shall follow the events. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of November, 2023.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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27

بعدالت

Before Service Tribunal
Peshawar

مورخہ 2,2024 منجانب مسائل BC 18-1734

مقدمہ 0346-9773786

دعویٰ

بنام

Javed Khalji
Vs
Govt of KP

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام پشاور کیلئے محمد آصف نثار

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 ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی 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 مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ 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 لکھدیا کہ سند رہے۔

Attested & Accepted by

المرقوم 18 ماہ 3 2024

Javed Khalji
Director Excise

Rahmat Kundi
ATC

M. Amin Kundi
Muhammad Amin Kundi
ATC