### FORM OF ORDER SHEET

Court of	
Appeal No.	2288/2024

•	<u>. Ap</u>	peal No. 2288/2024			
S.No.	Date of order proceedings	Order or other proceedings with signature of judge			
1	2	3			
1-	04/11/2024	The appeal of Mr. Asif Khan presented today by			
		Mr. Kabir Ullah Khattak Advocate. It is fixed for preliminary			
		hearing before Single Bench at Peshawar on 11.11.2024.			
		Parcha Peshi given to counsel for the appellant.			
		By order of the Chairman			
		REGISTRAR			
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### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. of 2024

Mr. Asif Khan Ex-FC No. 2405, District Police Khyber

..... Appellant

#### **VERSUS**

- 1. Capital City Police Officer Peshawar.
- 2. District Police Officer Khyber.

..... Respondents

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3.	Affidavit		7
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	and reply		9-10
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Appellant,

Through

Kabir Ullah Khattak Advocate, High Court,

Peshawar

## BEFORE THE KHYBER PAKHTUNKHWA-SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 2288 of 2024

Mr. Asif Khan Ex-FC No. 2405, District Police Khyber

..... Appellant

#### **VERSUS**

- 1. Capital City Police Officer Peshawar.
- 2. District Police Officer Khyber.

.......... Respondents

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST **IMPUGNED** DISMISSAL ORDER DATED 04/07/2024 WHEREBY PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED . THE AGAINST WHICH THE APPELLNT FILED DEPARTMENTAL APPEAL ON 06.08.2024 WHICH WAS REJECTED on 28.10.2024 ON NO GOOD GROUNDS.

#### Prayer:

By acceptance of the instant service appeal both the impugned orders dated 04.07.2024 and 28.10.2024 may please be set aside and the appellant may kindly be reinstated on his service along with all back benefits.

#### Respectfully Sheweth:



#### **FACTS**

### The appellant respectfully submits as under:

- 1) That the appellant was enlisted as Sepoy in Khyber Khasadar Force (now merged in Khyber Pakhtunkhwa Police) at the year of 2012.
- 2) That after appointment the appellant performed his official duty regularly with full devotion and hard work and no complaint whatsoever has been made against the appellant.
- That while performing his official duty with respondent department the appellant was suspended on 15.06.2023 on the ground of alleged involvement of the appellant in contact with Drug peddlers. (Copy of suspension order dated 15.06.2023 is attached as annexure-A).
- That a show cause notice dated 15.06.2023 was issued against the appellant due to alleged involvement mentioned in para 3 facts of appeal which was properly replied by the appellant on 20.06.2023 whereby he denied all the alleged allegations leveled against him. (Copy of show cause notice and reply are attached as annexure B & C).

- 5) That a charge sheet and statement of allegation dated 04.09.2023 was issued against the appellant which was properly replied by the appellant on 08.09.2024 whereby the appellant denied all the alleged allegation mentioned in the charge sheet and statement of allegation. (Copy of charge sheet, statement of allegation and reply are attached as annexure D & E).
- 6) That on 04.07.2024 the impugned order was issued against the appellant whereby the appellant was dismissed from service. (Copy of impugned dismissal order dated 04.07.2024 is attached as annexure F).
- 7) That the appellant submitted Departmental appeal 06.08.2024 against the impugned dismissal order dated 04.07.2024 which was rejected on 28.10.2024 on no good grounds. (Copy of Departmental appeal and rejection order are attached as annexure G & H).
- 8) That feeling aggrieved the appellant prepares the instant Service Appeal before this Hon' able Tribunal inter alia on the following grounds.

#### **GROUNDS**

A). That the impugned orders dated 04/07/2024 and 28.10.2024 are passed against the law, facts, norms of justice hence may be liable for setting aside.

- B). That the appellant was not present at the place of occurrence but the respondent department without any reason and proper justification involved the appellant in the instant case.
- C) That no departmental and regular inquiry was conducted by the respondent department and no chance of personal hearing and defense was provided to the appellant in this respect the appellant relied upon the judgement 2008 SCMR Page 1369.
- D). That there is no proof or evidence regarding the alleged allegations level against the appellant by the respondent departments and no complaint was made against the appellant.
- E). That no opportunity of cross examination was provided to the appellant and no iota of evidence is available against the appellant regarding alleged involvement of the appellant.
- F) That it is a well settle principal of law no one can be condemn unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page 678.

G). Any other grounds will be raised at the time of arguments with prior permission of this Hon' able Tribunal.

It is therefore most humbly prayed that on acceptance of this appeal By acceptance of the instant service appeal both the impugned orders dated 04.07.2024 and 28.10.2024 may please be set aside and the appellant may kindly be reinstated on his service along with all back benefits.

Any other remedy which this august tribunal deems fit that may also onward granted in favor of appellant.

Through

Kabir Ullah Khattak

&

Roeeda Khan Advocates, High Court, Peshawar.

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No.	of 2024			
Mr. Asif Khan Ex-FC	No. 2405, District Police Khyber			
	Appellant			
4	VERSUS			
Capital City Police O	fficer Peshawar & others			
:	Respondents			
ADDRESSES OF THE PARTIES Appellant				
Mr. Asif Khan Ex-FC No. 2405, District Police Khyber				
Respondents				
1) Capital City Pol	lice Officer Peshawar.			
2) District Police (	Officer Khyber.			
	Appellant			
	Through  Kabir Ullah Khattak			

Rooeda Khan

Advocates, High Court, Peshawar

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

	(7)
•	(2)

	•	
Appeal No.	•	of 2024

Mr. Asif Khan Ex-FC No. 2405, District Police Khyber

..... Appellant

#### VERSUS-

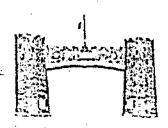
- 1. Capital City Police Officer Peshawar.
- 2. District Police Officer Khyber.

...... Respondents

#### **AFFIDAVIT**

I, Mr. Asif Khan Ex-FC No. 2405, District Police Khyber do hereby solemnly affirm and declare on oath that the content of the above application are true and correct to the best of my knowledge and belief and nothing has been kept secret and concealed from this Hon'ble Tribunal.

DEPONENT



## OFFICE OF THE DISTRICT POLICE OFFICER KHYBER



Dated: 15 /06/2023

No. 4494 /PA-DPO Khyber

#### **ORDER**

As per learned source FC Asif Khan No. 2405 of District Police Khyber while posted at Police Station Jamrud are allegedly involved in contact with drug peddlers. The alleged involvement in drug-related activities is a grave offense, and tarnishes the reputation of this department.

Thus, he is hereby suspended and closed to Police Line Khyber with immediate effect. He is directed to report to Police Line Khyber forthwith.

Separate show cause notice shall follow.

DISTRICT POLICE OFFICER.

OB No 542 Idated 15 106/2023 No 4495-98/PA-DPO Khyber

#### Copies to:

- DSP HQrs/ SHOs concerned to ensure compliance
- 2. OHC DPO Office Khyber for Transfer/Posting Record
- 3. Service Record Branch for compilation of Service Record
- 4. HRMIS to update their/his profile

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## OFFICE OF THE DISTRICT POLICE OFFICER KHYBER

No. 4499 IPA-DPO Khyher



## SHOW CAUSE NOTICE

Whereas you FC Asif Khan No. 2405 of District Police Khyber, while posted at PS Jamrud committed the following gross misconduct on your part:

"That, as per learned sources while you were posted at PS Jamrud you were found allegedly involved in contact with drug peddlers. The alleged involvement in drug-related activities is a grave offense, and tarnishes the reputation of this department. Being a member of the disciplined force, such criminal abetment by you is gross misconduct as per rule"

If you are found guilty of this allegation, Departmental action may result in Dismissal from Service as per Police Rules 1975 (With Amendments - 2014).

Therefore, I. Capt. Saleem Abbas Kulnehi (PSP), District Police Officer Khyber, being the competent authority, call upon you to respond to this Show-Cause Notice within 07 days of the receipt, and to state, why you should not be dealt with departmentally under Police Rules 1975 (With Amendments – 2014)

If you failed to submit any reply, ex-parte action shall be taken against you.

W DISTRICT POLICE OFFICER, KHYBER

80/06/2023 Try or E0,66888 HEED 240 - Ulain 1 Child 146 661 201 45 1 Joseph And of soin all with Drain super of the sof only offers 1-2 2000 SING DAD S LA CENSCON (1) Files 2/60 Mall 60 400 mind & Wall endo निर्देश में देश हैं ते है है ते हैं ते है ते हैं ते है है ते हैं ते है ते हैं त 的有的,而为了他们了相同是可管的的 (M 75 30). 190 2 de - 400 2000 2000 CO Cappe 190 中国的成功的被决定的明明的 からいでしてはかいかからのっちいからい र न्ते रहिते हैं तह आम शामी के द नरी मानी 河南西山河南南南部河南南南南南 المارورة م راح ورا الماري من المعالم المارية 15.00 cas de la la carda casa de 18 1000/20/21 6/12 / Con of a odd mais off our 01 - 4. 6 E Da-128 HI A - A/ 894 : ON 01501 Aran 6

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No. 66224PA-DPO Khyber

Dated: 040012023

## CHARGE SHEET UNDER SECTION 6(i(a)) OF POLICE RULES 1975

1. 1, Capt. ® Salcem Abbas Kuluchi (PSP), District Police Officer, Khyber, as a competent authority, hereby charge FC Asif Khun No. 2405 of District Police Khyber as per the following allegations:

"As per learned sources it is reported that, you, while deputed at Police Station Jamend, were found involved in contacts with drug peddlers in the area. It is reported that you are in contacts with elements who are involved in drug peddling and narcotics activities, and also involved in cancealment of ceased contrabands. Such activities are tantamaunt to gross misconduct and criminal abetment."

- 2. By the above-mentioned reasons, you appear to be guilty of Misconduct as per Police Rules, 1975 and that you have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
- 3. Therefore, you are directed to submit your written defense within 07 days of the receipt of this Charge Sheet to the Inquiry Officer, as the case may be.
- 4. Your written defense, if any, should reach the Inquiry Officer within the specified period, failing to which it shall be presumed that you have no defense to put in and, in that case, ex-parte action shall follow against you.

5. State, whether you desire to be heard in person or not.

Capt. © SALEEM ABRAS FULACIII (PSP)

DISTRICT POUTE OFFICER,

KTYBER

Copies to

I; SP lay, Khyber for initiation of Inquiry

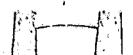
2: HRMIS and Service Record Branch for record/ Profile (s) update

1: FC Asif Khen No. 2405 for information and compliance



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#### OPFICE OF THE DISTRICT POLICE OFFICER KHYBER



Tel: 091-5862033

No 1623ra-DPO Khyber

Dated 499/2923

## DISCIPLINARY ACTION UNDER SECTION 5(3) OF POLICE RULES 1975

I, Capt. Stateent Althus Kulnehi (PSP), District Police Officer, Khyber, as a competent authority, believe that FC Asif Khun No. 2405 of District Police Khyber has rendered himself liable to be proceeded against as he committed the mentioned below allegations within the meaning of Police Rules, 1975 (With Amendments - 2014).

## STATEMENT OF ALLEGATIONS UNDER SECTION 6 (L(n)) OF POLIC RULES 1975

As per learned sources it is reported that, FC Asif Khan No. 2405 of District Police Khyber, while deputed at Police Station James, was found involved in contacts with drug peddlers in the area. It is reported that he is in contacts with elements who are involved in drug peddling and narcotics activities, and also involved in concealment of ceased contrabands. These acts come under the meaning of Misconduct as per section Z(iii) and render him liable for punishment under section 3(b) of Khyber Pakhtunkhwa Police Rules, 1975 (With Amendments – 2014), respectively.

To probe into the above-mentioned allegations against the said accused

Jav Hayber is hereby nominated as the Inquiry Officer under Section 5(4) of
the Khyber Pakhtunkhwa Police Rules 1975 (With Amendments - 2014).

The Inquiry Officer shall in accordance with the provision of Police Rules, 1975, provide reasonable apportunity of hearing to the delinquent official, record the findings, and make immediate recommendations whether to punish or to take other appropriate action against the delinquent official.

PC Asif Khan No. 2405 of District Police Khyber is directed to appear before the Inquiry Officer on the date, time and place fixed by the Inquiry Officer.

Capt to SALEEM AUDAS KULACIII (PSP)
DISTRICT POLICE OFFICER,
KUPTUER

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1: SP Inv. Khyber for initiation of inquiry

2; 1191418 and Service Record Branch für record/ Profile (s) update



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## OFFICE OF THE DISTRICT POLICE OFFICER KHYBER

Tel No. 091-5862033, Fax No. 091-5864478 Email dpokhyber@gmail.com.pk

No. 1962/PA-OP Khyber

dated 04.07.2024

#### DISMISSAL ORDER

FC Asif Khan No 2405 of District Police Khyber, while he was posted at PS Jamrud was issued with charge sheet No. 6622/PA DPO Khyber dated 04.09.2023 due to his alleged involvement in concealment of drugs and conducts with drug peddlers and drug peddlers.

Thus, a departmental inquiry was initiated against him. During the inquiry proceedings he was given the chance to produce written documentary proof in his defense and appear before the inquiry officer. He availed both but failed to submit anything in his defense. It was further revealed that he played a major rule in fake charging of Naseer Khan s/o Gohar amin r/o Dalazak Road Corporation Colony Peshawar in the case FIR No. 220, dated 25.08.2023 u/s 9D CNSA instead of Muhammad Israr s/o Muhammad Ibrahim Kuki Khel, who was the real accused and was released without any legal or criminal proceedings and it was him who in connivance with Ayaz and fayaz, the numinous drug peddler brothers in Wazir Dhand jamrud, brought Nazeer Khan from the drug rehabilitation hospital. He was also issued with Final Show Cause Notice No. 8536/PA/DPO Khyber dated 24.11.2023, but he failed to submit any satisfactory reply.

Further it is also found that the delinquent was previously suspended and closed to Police Lines Khyber vide order No 1404-/PA/DPO Khyber dated 15.06.2023 due in the same misconduct. He was provisionally and continued his criminal connections. Thus, he was found guilty and recommended to be awarded with major punishment.

As the delinquent official as transferred to CTD Khyber NDMS Khyber Pakhtunkhwa vide order No 8671/E-VI dated 26.10.2023, the recommendation was sent to CTD NDMS Khyber Pakhtunkhwa vide letter 985/PA-DPO Khyber dated 04.03.2024. however, the transferred order is cancelled vide order No 2569-IV dated Peshawar the 26.0.2024 by the office of AIG Establishment Police, Khyber Pakhtunkhwa.

The undersigned, as per the recommendation of the enquiry officer, being the competent authority to satisfied about his involvement in criminal abetment and in order to mention discipline in the force hereby awards the delinquent officials with Major Punishment of dismissal from service as per section 4 of police (E&D) rules 1975 with amendments 2014.

# SALEEM ABBASS KULACHI DISTRICT POLICE OFFICER KHYBER

OB No 756 dated 04.3.2024

No \_\_\_\_\_ PA DPO Khyber

Copies to

- 1. DSP HQRS Khyber.
- 2. OHC DPO Khyber for record.
- 3. Accountant DPO Khyber for stopper of pay.
- 4. Service record Branch/HRMIS for Service record,

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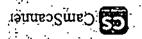
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FC Ast Khan Nw 2405 in Dinnet Holice Khyber, while hie was ponced at 15 Jammed with Charge Speech and Charge Speech and

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Page 2 of 3

As the delinquent afficial was transferred to CID NSIDs Khyber Pakhtinkhwa plate Order in 8671-7445-IV, dated 26/10/2021, the recommendation was cent to CTD NMIN Rhyber althunkhwa vide letter No. 985/PA. 1010 Kligher duted 04m3/2024. However, the transferred rder is cancelled vide Order No. 1360:7171-1V, third Feshawar the 26/03/2024 by the office of dti ficiablishment Bolica, Khyber Pakhtunkhwa

The undersigned, as penthe recommendation of the inquiry officer, being the competent uthority is satisfied about his involvement in springl about and drug pedding and brorder o maintain discipline in the force hereby awards the delinquent official with Major Punishment of Dismissal from Service as per Section 4-bily) of Police (E&D) Rules, 1975 (With Amendments -:0141

> CHE SALTEN AUDIS KULNETU (PSI) district l'objet officeil KINBER

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## BEFORE THE WORTHY CAPITAL CITY POLICE OFFICER (CCPO) POLICE LINES.

#### PESHAWAR

Subject:

APPEAL UNDER RULE 11 OF THE KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AMENDED UPTO DATE) AGAINST ORDER NO.1962/PA-DPO KHYBER, DATED: 04.07.2024 OF THE DISTRICT POLICE OFFICER (DPO) KHYBER, VIDE WHICH APPELLANT WAS DISMISSED FROM SERVICE.

Prayer-in-Appeal:

On acceptance of Instant oppeal, impugned order dated: 04.07.2024 of District Police Officer, Khyber may be set aside and Appellant may be re-installed in service with all consequential benefits.

#### Respected Sir.

- That Appellant was enlisted as Sepoy in Khyber Khassadar Force (Now merged in Khyber Pakhtunkhwa Police), in the year 2012 and since then till issuance of impugned order dated: 04.07.2024, performed dulies with zeal/devotion and ulmost satisfaction of the superiors, evident from absorption of his services in the Khyber Pakhtunkhwa Police Department, vide Notification dated: 13.02.2020 (Serial No.1763), needless to add that all those employees, having spottess career and outstanding performance, were merged in the Khyber Pakhtunkhwa Police Department.
- Inat Appellant, while posted at Bigyanti Check Post Police Station Jamrua, was served with charge sheet Na.6623/PA-DPO Khyber, dated: 04.09,2023 and leveled the following allegations:

"As per learned sources it is reported that FC Asil Khan No. 2405 of District Police Khyber, while deputed at Police Station Januard, was found involved in contacts with drug peddiers in the area, it is reported that he is in contacts with elements who are involved in drug pedding and Narcolics Activities and also involved in concealment of setted contrabands. These acts come under the meaning of misconduct as per Section 2(iii) and render him liable for punishment Under Section 3(b) of Khyber Pakhtunkhwa Police Rules, 1975."

Appellant submitted comprehensive reply to the allegations ibid and claimed innocence.

That Appellant was served with final Show Cause Notice No.8563/PA-DPO Khyber, dated:
 24.11.2023 with the following accusation:

"That inquiry officer in his lindings vide No.840/PA, dated: 16.10.2023 find you guilty of the charges leveled against you as in charge sheet No.6622/PA-DPO Khyber dated: 04.09.2023. That the inquiry officer in his lindings in the enquiry initiated against you found you guilty of the charges and recommended award of punishment as per Rute."

Appellant submitted reply to the Show Cause Notice ibid within the slipulated time and not only claimed innocence but also requested for personal hearing.

- 4. That DPO Khyber, without either giving apportunity of hearing or conducting regular inquiry into the matter or providing free and fair opportunity to appellant to defend himself, imposed major penalty of dismissal from service upon him, vide Order No.1962/PA-DPO Khyber, dated: 04.07.2024.
- That impugned order dated: 04.07.2024 is against the law, facts and material available on file, hence untenable.
- 6. That Appellant was charged for take accusation of a person namely Nazeer Khan, in case FIR No.220, dated: 25.08.2024, Under Section 9-D CNSA, Police Station Jamrud, instead of Muhammad Israr, who was the real accused and was allegedly released by

Ru

the Appellant without any legal / criminal proceedings, which is althougher basaless and carry no legal weight, because:

- i. Accused Nazeer Khan and Muhammad Israr have been charged in case FIR No.220 dafed: 25.08.2024, Under Section 9-D CNSA. Police Station Jamrud. by complainant and the FIR was chalked by Mahamar Akhtar Hussain, which clearly indicates that Appellant was neither present on the spot nor he played any role in the entire
- ii. Accused Muhammad Israr was arrested by the local pulice and ofter associating him with the investigation, he was granted post arrest bail by the learned Additional Sessions Judge-II, Khyber, vide order dated: 12.09.2023, while co-accused Nazeer Khan is behind the bars.
- iii. Trial in the aforementioned case has been commenced and charge has been framed against both the accused, vide order dated: 22.06.2024 and date: 08.08.2024 is fixed therein for anward proceedings, but astonishingly none of the accused has taken the plea, on the basis whereof Appellant has been shunt-out from service.

That Appellant has neither been provided opportunity of hearing nor regular inquiry has been conducted into his alleged accusation, hence has been condemned unheard, which attracts the doctrine of audi atteram partem.

That no iota of evidence is available on file which could substantiate the alleged hearsay charges/accusation against Appellant. Moreover, Appellant has neither been treated in accordance with law nor he has been extended equal protection of law, enshrined in Articles 4 & 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

That more than 10 years spotless career of Appellant has been done away with single stroke of pin without care and caution of its legal consequences, moreover, impugned order dated: 04.07.2024 has been passed in surmises & conjectures, hence carry no legal weight.

That any other ground, with the permission of your honor, will be taken at the time of personal hearing, if granted.

It is, therefore, most humbly prayed that on acceptance of instant appeal, impugned order dated: 04.07.2024 of District Police Officer, Khyber may be set aside and Appellant may be re-instated in service with all consequential benefits.

Yours sincereig.

ASIF KHAN S/O SHAUKAT ALI

Ex-FC. Tehsil Jamrud District Khyber

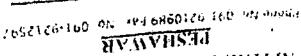
Cell : 0334-8889903 CNIC : 21202-9164685-4

: 06.08.2024

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OFFICE OF THE

CAPITAL CITS POLICE OFFICER,





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'bolates' of the findings of the Enquiry Officer awarded him the major punishment of dismissal from findings in which he was recommonded for major punishment. The competent authority in light accused official. The languing Officer after conducting departmental enquiry submitted his SP-Investigation. Khyber was appointed as Unquit, Officer to serutinize the conduct of the He was issued Charge blied and Summary of Alegations in 1910. Rhyber,

his defense. Therefore, his appeal for setting aside the punishment awarded to him by DPO an opportunity to prove his innocence, However, he failed to submit any plausible explanation in He was heard in person in Orderly Room. During personal hearing, he was given

Kliyber vide order No. 1962/PA. dated 04.07.2024, is hereby rejected/filed.

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t207/01 / 8d ксе оғысен,

dated Peshawar the

6246-6600 IPAICCP.

Copies for information and necessary action to the:-

DSPAHQrs Khyber. District Police Officer Khyber, along with complete inquiry file.

ファイブ چىدىدىلالىياھىدىكىلىدلىلىلىلىكىلىلىلىدىدىدىلىكىلىك المعرود مولومان والموافئة في المراكع المحديد كسسة في الجاليه وي محدود المان الأبهر أية ما بالمنت سنام به خاله لارا ما المرك لم على التفال ورفي في الجاري والمرابع المرابع كرياري المرابعة المرا كسيد للمربعة عديد من من الأجر التلا لافي الدين المرابعة للكرا المرابعة ولأ منه الأعرائدل للخالي عاملان كالمايون والمدارة الماسية الأماية الاكسالة المائيليان كالمعالا يرتم بهذا المعالية الأعلى المقالا في ببداء خير المطوير بلياء شاقه المكاء فسر كرسالا الموايا وسياك ركي بخذرة به يايته الارأب الاراقي الرئيسية بل مع بسب له سرجيده ولارا بما له حرف المارية TO SULL SOON WON THE WAS THE W سكة / تلك رأ الدال المراب الكرارية كلااء حسنة بالمراب الإلاان المراب المدارة A ( 6)