


FORM OF ORDER SHEET

Court of _____

Review Petition No. 1384/2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18/11/2024	<p>The Review Petition in appeal no. 14546/2020 submitted today by Mr. Zia ud Din Khan Advocate. It is fixed for hearing before Division Bench at Peshawar on 21.11.2024. Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

①

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHYUNKHWA
PESHAWAR**

Review Petition No. 1385 -P/2024

In

Service Appeal No. 14546 -P/2020

Abdullah Jan

VERSUS

Secretary Home KPK

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Dated: 18/11/2024

Petitioner

Through

Zia-Ud-Din Khan
Advocate High Court

&
Federal Shariat Court
~~ZIA-UD-DIN KHAN~~
Advocate
Federal Shariat
Court of Pakistan

**Office: INSAF LAW CHAMBER Flat No. 34-B, Super Market Phase-1
Hayatabad Township Peshawar City, Khyber Pakhtunkhwa
Province the Islamic Republic of Pakistan.**

Cell. No. 0345-9110368/0303-5893180

E-mail: Ziakhan_12@yahoo.com

②

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHYUNKHWA
PESHAWAR

Review Petition No. 1385 -P/2024

In

Service Appeal No. _____ -P/2020

Abdullah Jan Ex-Naib Subedar Regimental No. 2515 Bajawar Levies,
Khar Sub-Division District Bajawar Khyber Pakhtunkhwa.

[Petitioner]

VERSUS

- 1) The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat Peshawar Khyber Pakhtunkhwa.
- 2) The Inspector General of Police Khyber Pakhyunkhwa, Central Police Lines Peshawar.
- 3) The District Police Officer (DPO) Bajawar at Civil Officers Colony Khar District Bajawar Khyber Pakhtunkhwa.
- 4) The Deputy Commissioner Bajawar at Civil Officers Colony Khar District Bajawar Khyber Pakhtunkhwa.

[Respondents]

.....

REVIEW PETITION U/S 7 A OF THE KYBER PAKHTUNKHWA
SERVICE TRIBUNALS (AMENDMENT) ACT 2024 AGAINST THE
JUDGMENT OF THIS TRIBUNAL DATED 11/09/2024 PASSED IN
SERVICE APPEAL NO. 14546-P/2020 WHEREBY THE APPEAL HAS
BEEN DISMISSED.

Respectfully Sheweth:

BRIEF FACTS

- 1) That the Petitioner/appellant filed the instant appellant against the respondents for redressal of his grievances before this Hon'ble Court/tribunal wherein the Hon'ble Court dismissed the instant service appeal on dated 11/09/2024.

{Copy of Service Appeal along with Judgment annexed Annexure- A}

- 2) That this Hon'ble Court unfortunately dismissed the above service appeal which is against the famous Principles of Natural Justice. The Petitioner

through the instant 'Review Petition' seeks 'Review' of the judgment passed by this Hon'ble Court on various grounds.

- 3) It is pertinent to mention here that the Petitioner had earlier filed a "Review Petition" against the judgment of this Court/Tribunal and during the course of arguments the Hon'ble Court stated at the bar and agreed that the present review petition is not maintainable as no such provision for review of judgment available under the Khyber Pakhtunkhwa Service Tribunal Act 1974, hence the same shall be disposed of and after the new amendments which is under process, then fresh review shall be filed. But unfortunately, the same has been dismissed not disposed of with the directions to file fresh one after the new amendments in the Khyber Pakhtunkhwa Service Tribunal Act 1974.

{Copy of KPK Service Tribunal Amendment Act 2024 annexed Annex-B}

- 4) That feeling aggrieved from the Judgment dated 11/09/2024 of this Hon'ble Court/Tribunal, the petitioner filed this Review Petition on the following grounds inter alia:-

GROUNDS

- A) That the Hon'ble Court/Tribunal dismissed the above service appeal on the basis on two points without touching the merits of the case which needs to be review.

- B) That "Para 6" of the consolidated judgment has been reproduced as under;

"As to the first point, mooted before us the District Attorney produced copy of judgment in Writ Petition No. 4039-P/2016 dated 23.05.2017. The District Attorney also produced copy of order sheet dated 01.11.2016 passed in Writ Petition No. 4039-P/2016 and operation of Schedule No. III & IV of the minutes dated 21 .07. 2016 to the extent of petitioner be kept suspended. He explained that the Subedars, seven in number could not have been retired on 20.10.2016 because of suspension order in the above referred writ petition, therefore, their posts were not vacant as alleged by the appellants. This situation could not have been controverted by the appellants. This contention of the appellants cannot be therefore, considered being not well-founded".

- C) Similarly, in "Para 7" of the judgment it has been mentioned "that there were left three months before the appellants could retire but they were prematurely retired. In this respect, we observed that there is no denial of the fact that tenure service of Naib Subedar is Seven (07) years. The appellants

were admittedly promoted to the posts of Naib Subedars on different dates i. e, Mr. Abdullah Jan on 31.12.2009 and Mr. Jan Alam on 31. 05. 2010 and they had retired w. e. f 30.05.2017 i. e. on completion of seven (07) years service tenure as Naib Subedars as per Rule 17 of the relevant rules."

- D) That the consolidated Judgment passed on dated 11/09/2024 by this Hon'ble Court/Tribunal in the connected service appeals which is against the true spirit of justice. Hence, the judgment of this Court/tribunal is definitely reviewable.
- E) That it is crystal clear from the available record that the vacant posts of Subedars were available for appellants promotion and the Respondent No (3)/the Deputy Commissioner Bajawar was legally bound to promote the present appellants against the same which was due since the year 2016.
- F) That the petitioner/appellant during the course of arguments also provided an attested copy of their earlier proceedings before the Hon'ble Federal Service Tribunal wherein the case was disposed of with serious observations against the respondents. But unfortunately, this Court/Tribunal even didn't consider those observations of the FST.
- G) That the Hon'ble Court has the jurisdiction to entertain the service appeal to decide the same with true spirit of justice. Hence, keeping in view of the above submissions there is no legal impediment to review the Judgment dated 11/09/2024 passed by this Hon'ble Court/Tribunal. Reliance shall be made on the judgment of the Hon'ble Supreme Court 'PLD 2007 SC (121)' wherein it has been stated that "Right to claim review of any decision of a Court of Law, like the right of appeal is a substantive right and not mere matter of procedure".

PRAYER

It is Therefore, most humbly prayed that on acceptance of this Review Petition, the Judgment of this Hon'ble Court/Tribunal dated 11/09/2024 in the above-mentioned service appeal may kindly be reviewed and the case shall be decided on merit with true spirit of Justice.

Dated: 18/11/2024

Aujan

Petitioner

Through

Zia-Ud-Din Khan
 Advocate High Court
 Advocate
 High Court Federal Shariat
 Court of Pakistan

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**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHYUNKHWA
PESHAWAR**

Review Petition No. _____-P/2024

In

Service Appeal No. _____-P/2020

Abdullah Jan

VERSUS

Secretary Home KPK

Affidavit

I, Abdullah Jan Ex-Naib Subedar Regimental No. 2515 Bajawar Levies, Khar Sub-Division District Bajawar Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of this 'Review Petition' are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court/Tribunal.

Abdullah Jan

DEPONENT

CNIC. No. 21103-2295322-7

Contact No. 0304-9056156

Identified & attested by

Oath Commissioner/

Notary Public



G M
18/11/2024


Annex-A (6-25)

6

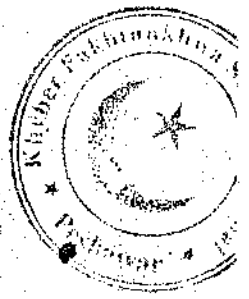
FORM OF ORDER SHEET

Court of _____

Review Petition No. 1161/2024

No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10/10/2024	<p>The Review Petition in appeal no. 14549/2020 submitted today by Mr. Zia-ud-Din Khan Advocate. It is fixed for hearing before Division Bench at Peshawar 15.10.2024 Original file be requisitioned. Parcha Peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

7





15th Oct, 2024

1. None for the petitioner present.
2. Lawyers are on strike, therefore, the case is adjourned.

To come up on 23.10.2024 before D.B.

SCANNED
Khyber Pakhtunkhwa
Peshawar


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A.

ORDER

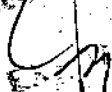
23rd Oct, 2024

Mr. Kalim Arshad Khan, Chairman: Learned counsel for the petitioner present. Mr. Muhammad Jan, District Attorney for respondents present.


2. The petitioner has filed this review petition under Section-114 CPC read with Order-XLVII Rule-1 of the Civil Procedure Code for review of judgment/order dated 11.09.2024, whereby this Tribunal dismissed the appeal of the petitioner. There is no provision of review the order or judgment in the Khyber Pakhtunkhwa Service Tribunal Act or Rules, 1974, therefore, this petition is otherwise not maintainable. Dismissed accordingly. Consign.


3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 23rd day of October, 2024.*

Certified to be true copy


Muhammad Akbar Khan
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
14-11-24

Adnan Shah


(Muhammad Akbar Khan)
Member(E)


(Kalim Arshad Khan)
Chairman

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No. 879 Date 14-11-24

Name of Applicant Zia-ud-din

Number of Words/Pages 1-9

Copying Fee 5/-

Urgent/Ordinary 5/-

Total 10/-

Name & Sign of Copyist Zeeshan

Date of Certification 14-11-24

Date of Delivery to Court 14

(8)

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**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHYUNKHWA
PESHAWAR**

Review Petition No. 1161 -P/2024

In

Service Appeal No. 14546 -P/2020

Abdullah Jan

VERSUS

Secretary Home KPK

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Dated: 10/10/2024

Petitioner

Through

Zia-Ud-Din Khan
Advocate High Court

Federal Sharia Court
ZIA-UD-DIN KHAN
Advocate
High court Federal Sharia
Court of Pakistan

**Office: INSAF LAW CHAMBER Flat No. 34-B, Super Market Phase-I
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E-mail: Ziakhan_12@yahoo.com

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2

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHYUNKHWA
PESHAWAR**

Review Petition No. 1161 /2024

In

Service Appeal No. 14546 -P/2020



Abdullah Jan Ex-Naib Subedar Regimental No. 2515 Bajawar Levies,
Khar Sub-Division District Bajawar Khyber Pakhtunkhwa.

[Petitioner]

VERSUS

- 1) The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat Peshawar Khyber Pakhtunkhwa.
- 2) The Inspector General of Police Khyber Pakhtunkhwa, Central Police Lines Peshawar.
- 3) The District Police Officer (DPO) Bajawar at Civil Officers Colony Khar District Bajawar Khyber Pakhtunkhwa.
- 4) The Deputy Commissioner Bajawar at Civil Officers Colony Khar District Bajawar Khyber Pakhtunkhwa.

[Respondents]

ATTESTED

EX-NAIB SUBEDAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

14-11-24

.....
**REVIEW PETITION U/S 114 R/W ORDER 47 RULE 1 OF THE CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT OF THIS TRIBUNAL
DATED 11/09/2024 PASSED IN SERVICE APPEAL NO. 14546/P/2020
WHEREBY THE APPEAL HAS BEEN DISMISSED.**

Respectfully Sheweth:

BRIEF FACTS

- 1) That the Petitioner/appellant filed the instant appellant against the respondents for redressal of his grievances before this Hon'ble Court/tribunal wherein the Hon'ble Court dismissed the instant service appeal on dated 11/09/2024.

{Copy of Service Appeal along with Judgment annexed Annexure- A}

- 2) That this Hon'ble Court unfortunately dismissed the above service appeal which is against the famous Principles of Natural Justice. The Petitioner

through the instant 'Review Petition' seeks 'Review' of the judgment passed by this Hon'ble Court on various grounds.

3) That feeling aggrieved from the Judgment dated 11/09/2024 of this Hon'ble Court/Tribunal, the petitioner filed this Review Petition on the following grounds inter alia:-

GROUNDS

A) That the Hon'ble Court/Tribunal dismissed the above service appeal on the basis on two points without touching the merits of the case which needs to be review.

B) That "Para 6" of the consolidated judgment has been reproduced as under;

"As to the first point, mooted before us the District Attorney produced copy of judgment in Writ Petition No. 4039-P/2016 dated 23.05.2017. The District Attorney also produced copy of order sheet dated 01.11.2016 passed in Writ Petition No. 4039-P/2016 and operation of Schedule No. III & IV of the minutes dated 21.07.2016 to the extent of petitioner be kept suspended. He explained that the Subedars, seven in number could not have been retired on 20.10.2016 because of suspension order in the above referred writ petition, therefore, their posts were not vacant as alleged by the appellants. This situation could not have been controverted by the appellants. This contention of the appellants cannot be therefore, considered being not well-founded"

C) Similarly, in "Para 7" of the judgment it has been mentioned "that there were left three months before the appellants could retire but they were prematurely retired. In this respect, we observed that there is no denial of the fact that tenure service of Naib Subedar is Seven (07) years. The appellants were admittedly promoted to the posts of Naib Subedars on different dates i. e. Mr. Abdullah Jan on 31.12.2009 and Mr. Jan Alam on 31.05.2010 and they had retired w. e. f 30.05.2017 i. e. on completion of seven (07) years service tenure as Naib Subedars as per Rule 17 of the relevant rules."

D) That the consolidated Judgment passed on dated 11/09/2024 by this Hon'ble Court/Tribunal in the connected service appeals which is against the true spirit of justice. Hence, the judgment of this Court/Tribunal is definitely reviewable.

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- E) That it is crystal clear from the available record that the vacant posts of Subedars were available for appellants promotion and the Respondent No (3)/the Deputy Commissioner Bajawar was legally bound to promote the present appellants against the same which was due since the year 2016.
- F) That the petitioner/appellant during the course of arguments also provided an attested copy of their earlier proceedings before the Hon'ble Federal Service Tribunal wherein the case was disposed of with serious observations against the respondents. But unfortunately, this Court/Tribunal even didn't consider those observations of the FST.
- G) That the Hon'ble Court has the jurisdiction to entertain the service appeal to decide the same with true spirit of justice. Hence, keeping in view of the above submissions there is no legal impediment to review the Judgment dated 11/09/2024 passed by this Hon'ble Court/Tribunal. Reliance shall be made on the Judgment of the Hon'ble Supreme Court 'PLD 2007 SC (121)' wherein it has been stated that "Right to claim review of any decision of a Court of Law, like the right of appeal is a substantive right and not mere matter of procedure".

PRAYER

It is Therefore, most humbly prayed that on acceptance of this Review Petition, the Judgment of this Hon'ble Court/Tribunal dated 11/09/2024 in the above-mentioned service appeal may kindly be reviewed and the case shall be decided on merit with true spirit of Justice.

Dated: 10/10/2024

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
Petitioner

Through

Zia-Ud-Din Khan
Advocate High Court

Federal Sharia Court
ZIA-UD-DIN KHAN
Advocate
High Court Federal Sharia
Court at Peshawar

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

Review Petition No. _____ -P/2024

in

Service Appeal No. 1514546 -P/2020

Abdullah Jan

VERSUS

Secretary Home KPK

Affidavit

I, Abdullah Jan Ex-Naib Subedar Regimental No. 2515 Bajawar Levies, Khar Sub-Division District Bajawar Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of this 'Review Petition' are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court/Tribunal.

Certified to be true copy

EX. P. P.
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
14-11-24

Abdullah Jan

DEPONENT

CNIC No. 21103-2295322-7
Contact No. 0304-9056156

Identified & attested by

Oath Commissioner/

Notary Public



10-10-24

Khyber Pakhtunkhwa Service Tribunal, Peshawar	
Application No. <u>679</u>	Date <u>14-11-24</u>
Name of Applicant <u>Zia-ud-din</u>	
Number of Words/Pages <u>4-1</u>	
Copying Fee <u>20/-</u>	
Urgent/Ordinary <u>5/-</u>	
Total <u>25/-</u>	
Name & Sign of Copyist <u>Zooshan</u>	
Date of Completion of Copy <u>14-11-24</u>	
Date of Delivery of Copy <u>14-11-24</u>	

Annex-A (6 - 17)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 14546-P/2020

Abdullah Jan Ex-Naib Subedar Regimental No. 2515 Bajawar Levies
Khar Sub-Division District Bajawar Khyber Pakhtunkhwa.



[Appellant]

VERSUS

- 1) The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat Peshawar Khyber Pakhtunkhwa.
- 2) The Inspector General of Police Khyber Pakhtunkhwa, Central Police Lines Peshawar.
- 3) The District Police Officer (DPO) Bajawar at Civil Officers Colony Khar District Bajawar Khyber Pakhtunkhwa.
- 4) The Deputy Commissioner Bajawar at Civil Officers Colony Khar District Bajawar Khyber Pakhtunkhwa.

[Respondents]

AMENDED APPEAL

UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 06/10/2020 WHEREBY THE DEPARTMENTAL APPEAL BEARING NO. CS (F)/L&K/4-LEVY/APPEAL/2336-38 OF THE APPELLANT REGARDING HIS DEPARTMENTAL PROMOTION HAS BEEN DISMISSED.

Respectfully Sheweth:

BRIEF FACTS

1) That the Appellant is a respectable Law-abiding citizen of Pakistan and belongs to a respectable family. As per version of the appellant he was initially appointed against the post/vacancy of 'Sepahi' in the respondents department in 1985 under the then repealed Laws wherein the appellant performed his services with zeal and zest to the entire satisfaction of his superiors. While, it is worth mentioning that the appellant has been promoted from time to time and on 30/12/2009, he was promoted to the post of N/Subedar keeping in view his excellent and gleaming service record.

{Copy of Promotion Order dated 30/12/2009 along with List of Seniority annexed Annexure-A}

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2) It is pertinent to mention here that the Respondents made alterations/amendments in the 'Federal Levies Force (Services) Rules 2012' repeatedly and in this regard the respondents further amended the above mentioned Rules through 'Notification /SRO, 936 (1)/2016 dated 04/10/2016'. Accordingly 'Schedule-IV' of the said Rules has been amended only to the extent of tenure of three categories of 'Subedar Major, Subedar & Naib Subedar' by reducing their service tenure and left the remaining unamended which was gross discrimination against the present appellant.

3) It is further supplemented that Respondent No (3)/the Deputy Commissioner Bajawar was legally bound to promote the present appellant to the next higher post of 'Subedar' which was due since the year 2016. But unfortunately, the respondent through policy of sheer discrimination, favoritism and nepotism promoted 'Mr. Said Gul & Sher Bahadur' who were 'juniors' but despite that they were promoted to the next higher cadre/post of 'Subedar' through vide order dated 20/03/2017 and the appellant has been declared 'retired premature' in reference to the 'Federal Levies Force (Amended) Rules 2013' with their malafide intention. While it is also important to mention here that the above naming promoted employees were placed at 'S. No. 5 & 6' respectively in the 'Final Seniority List'.

{Copy of Promotion Order dated 20/03/2017 along with Departmental Appeal annexed Annexure- B}

4) That the 'Respondent No (4)/the Deputy Commissioner Bajawar' through impugned 'Office Order dated 20/03/2017' issued 'Premature Retirement' of the appellant from service instead of promotion to the next high cadre. The premature order of retirement of the appellant from service is unlawful and against the Law, hence liable to be set-aside and the appellant shall be reinstated with all back benefits.

{Copy of Impugned 'Office Order dated 20/03/2017' annexure- C}

5) The Appellant is entitled for his due promotion against the post of 'Subedar' but unfortunately, the respondents promoted his juniors and the appellant finally challenge the same illegal and unlawful order before the worthy 'Federal Service Tribunal'. The worthy FST suspended the order of Respondent No (3)/the Deputy Commissioner Bajawar regarding 'premature retirement' of the appellant.

{Copy of FST Suspension Order Dated 26/09/2018 annexure- D}

ATTESTED
 Deputy Commissioner
 Bajawar

6) That the present Appellant was 'senior' to those who were earlier promoted by the respondents through their illegal approach and the same is crystal clear from the 'Final Seniority List' issued dated 31/12/2015.

7) It is further averred that the Appellant also submitted 'Review Application' before the Respondent No (1)/the Home Secretary Khyber Pakhtunkhwa against the impugned office order on dated 03/11/2020. But unfortunately, the same haven't been considered till date.

(Copy of Review Application dated 03/11/2020 annexed annexure- E)

8) That the act of the Respondent to bypass the core and fundamental right of promotion of the appellant, as well as his 'premature retirement' from service as mentioned in the 'above Para's is not only based on their mala fide intention but the same is also against the Principles of Natural Justice. Reliance could be made on the judgment of the Hon'ble Supreme Court of Pakistan in the Constitution Petition No. 24 of 2012 and Civil Petition No. 773-P of 2018, wherein it was held that;

'All are equal before the law and are entitled without any discrimination to equal protection of law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law'.

9) Therefore, keeping in view the above stated facts, the appellant being aggrieved of the unlawful acts of the respondents, and finding no other alternate remedy/option but to approach this Hon'ble Tribunal/Court through the appeal in hand on the following grounds inter alia:-

GROUNDS

A) That the impugned 'Office Order' issued by the 'Respondent No (1)/the Home Secretary KPK' against the appellant whereby the 'Departmental Appellant' of the appellant has been dismissed is not only against the Law, Rules and norms but also void-abinitio and against the Principles of Natural Justice. While, it is established Law that any notification or governmental policy could not take effect retrospectively. Reliance could be placed on the judgment of the Hon'ble Supreme Court of Pakistan '2007 PLC (CS) 229'.

(Copy of Office Order dated 06/10/2020 annexed annexure- E)

RECEIVED
Khyber Pakhtunkhwa
Tribunal

B) That the Appellant has been condemned unheard and has not been treated in accordance with Law. Reliance could be made on the judgment of the Hon'ble Lahore High Court in the case title Muhammad Riaz Vs MS, Service Hospital Lahore (2016 PLC (C.S 296) wherein It has been clearly stated that:

'Whenever any discretion was given to an authority It had to be exercised not arbitrarily, but honestly, justly and fairly in consonance with the spirit of law after application of judicious mind and for substantial reasons--- Discretion had to be exercised with due care and caution keeping in mind the principles of natural justice, fair trial and transparency.'

C) That the Appellant is a well qualified and experience candidate, hence eligible for regular promotion according to his gleaming service record. It is pertinent to mention here that the impugned office order of the respondents has been passed with retrospective effect which is not permissible under the law hence, liable to be set-aside. While, the Hon'ble Supreme Court of Pakistan in '1996 SCMR (201)' laid down the dictum that penalty cannot be passed retrospectively as no executive order retrospective effect. Hence, the order of the respondents is absolutely violated the spirit of Law as well as the dictum laid by the Hon'ble Supreme Court of Pakistan in the above mentioned judgment. Similarly reliance could be made on the judgment of the Hon'ble Peshawar High Court in the case of Ms. Shakeela Versus University of Peshawar through Vice Chancellor, wherein it was clearly stated that:

'In genuine cases, the High Court cannot fold-up its hand sealing the fate of an aggrieved student leaving him at the mercy of the people who indulge in reckless dispensation of duties--Bar against re-checking of papers cannot be taken as a stumbling block nor it can operate an absolute one in the way of High Court when seized with such a matter in its Constitutional Jurisdiction nor the Authorities can be permitted to clad itself with the barring rule after committing wrong and causing injustice to a student putting her over his academic career in jeopardy.'

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

D) It is pertinent to mention here that the Principal Bench of the Hon'ble Peshawar High Court has earlier granted relief to similar employees on dated 07/12/2016 and the present appellant has the fundamental right to be treated at par keeping in view 'Article 25' of the 1973 Constitution of the Islamic Republic of Pakistan. While, there are plethora of judgments of the Superior judiciary wherein the 'question of Law' has been decided

once, the benefit of that will be extended to all those who had similar point of contention. Hence, the impugned office order has no value in the eyes of Law, therefore shall be declared null and void keeping in view the judgment of the Hon'ble Supreme Court of Pakistan reported as 'PLD 1975 SC 678'. It has been clearly stated regarding the well-known principle of interpretation of statutes that:

'A statute should be interpreted in a manner which suppresses the mischief and advance the remedy. It is also supported by the observations made in that mere technicalities unless offering any insurmountable hurdle should not be allowed to defeat the ends of justice and the logic of words should yield to the logic of realities'.

E) That the Hon'ble Tribunal/Court had earlier suspended the operations of the impugned office order in similar nature service appeals which are pending therein. Hence, keeping in view the above stated facts, the impugned office order of the respondent shall also be suspended in the present appeal to fulfill the ends of justice.

(Copy of Suspension Orders dated 15/10/2020 annexed annexure- G)

F) That the impugned offices order of the Respondents regarding the dismissal of the appellant departmental appeal as well as the earlier order of premature retirement amounts to penalty of 'compulsory Retirement' from service which cannot be imposed on the appellant without any proper 'Show-Cause' and personal hearing. Hence, keeping in view the service record of the appellant on his credit and the impugned office order of the respondents is 'Coram non Judge' are liable to be Set-aside as the same is not sustainable under the law.

G) That the Appellant shall be allowed to add any other ground(s) at the time of arguments.

PRAYER IN APPEAL

On acceptance of the Amended Appeal in hand;

1) The impugned 'Office Order dated 06/10/2020 of the 'Respondent No (1)/the Home Secretary KPK' may kindly be Set-aside and the respondents be strictly directed to allow the appellant to resume his duty/service to complete his statutory period of 'Sixty years' to meet the ends of justice.

EXAMINED
Khayr Pakhtoon
Service Tribunal
Peshawar

- ii) The impugned 'Office Order dated 06/10/2020 of the 'Respondent No. (1)/The Home Secretary KPK' regarding the Appellant premature retirement from service is against the Law, hence liable to be set-aside and the appellant shall be promoted to the next higher cadre/post of 'Subedar' as per available Rules at par with other similar employees of the Bajawar Levies.
- iii) The impugned 'Office Order dated 20/03/2017' of the 'Respondent No. (4)/The Deputy Commissioner Bajawar' regarding the premature retirement from service of the appellant is unlawful and against the Law, hence liable to be set-aside and the appellant shall be promoted to the next higher cadre/post of 'Subedar' as per available Rules at par with other similar employees of the Bajawar Levies.
- iv) The impugned office order shall be declared null and void as the same is illegal, unlawful, unauthorized, void-ab-initio, without any lawful justification and due to the misrepresentation of the respondents ineffective upon the valuable rights of the appellant and nullity in the eyes of Law. Hence, the appellant shall be promoted with all consequential benefits.
- v) Any other relief deems proper in the circumstances of this case may also be granted in favor of the appellant.

INTERIM RELIEF

That the Appellant has a Good Prima Facie case and the operation of the impugned Office Order dated 06/10/2020 of the Respondent No. (1) & 'Office Order dated 20/03/2017' of Respondent No. (4) shall be suspended and the appellant shall be allowed to resume his duty.

Dated: 20/09/2021

Jam
Appellant

Through
Zia-Ud-Din Khan
Advocate High Court

Zia-Ud-Din Khan
Advocate
High Court Peshawar
Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application: 18-09-2021
 Number of Pages: 8-P
 Copying Fee: 40/-
 Urgent: 40/-
 Total: 40/-
 Name of Applicant: ---
 Date of Filing: 26-09-2021
 Date of Receipt: 26-09-2021



A # 15289/2020
ORDER
1st Sep. 2024.

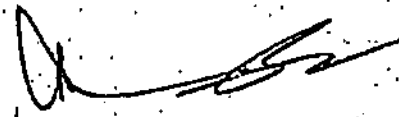
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for respondents present. Heard.
2. Vide our consolidated judgment of today placed on file of connected Service Appeal No. 14549/2020 titled "Abdullah Jan Vs. Government of Khyber Pakhtunkhwa", instant service appeal is dismissed with costs. Copy of the judgment be placed on file of this appeal. Consign.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th day of September,*

2024.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Mutazam Shah


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

Service Appeal No.14546/2020 titled "Abdullah Jan versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No.15289/2020 titled "Jan Alam versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others" decided on 11.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
RASHIDA BANO ... MEMBER(Judicial)

13

Service Appeal No.14546/2020

Date of presentation of Appeal.....20.11.2020
Date of Hearing.....11.09.2024
Date of Decision.....11.09.2024

Abdullah Jan, Ex-Naib Subedar Regimental No.2515 Bajaur Levies, Khar Sub-Division District Bajaur, Khyber Pakhtunkhwa
.....(Appellant)

Versus

1. The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer Bajaur at Civil Officers Colony Khar District Bajaur Khyber Pakhtunkhwa.
4. The Deputy Commissioner Bajaur at Civil Officers Colony Khar District Bajaur Khyber Pakhtunkhwa.....(Respondents)

Service Appeal No.15289/2020

Date of presentation of Appeal.....30.11.2020
Date of Hearing.....11.09.2024
Date of Decision.....11.09.2024

Jan Alam, Ex-Naib Subedar Regimental No.2636 Bajaur Levies, Khar Sub-Division District Bajaur, Khyber Pakhtunkhwa
.....(Appellant)

Versus

1. The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer Bajaur at Civil Officers Colony Khar District Bajaur Khyber Pakhtunkhwa.
4. The Deputy Commissioner Bajaur at Civil Officers Colony Khar District Bajaur Khyber Pakhtunkhwa.....(Respondents)

Present:

Mr. Zia Ud Din Khan, Advocate.....For the appellants
Mr. Muhammad Jan, District Attorney.....For respondents

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(21)

(14)

Service Appeal No 1454972020 titled "Abdullah Jan versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No. 15289/2020 titled "Jan Alam versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others" decided on 11.09.2024 by Division Bench consisting of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 06.10.2020 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS REGARDING THEIR DEPARTMENTAL PROMOTION HAVE BEEN DISMISSED.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above two appeals, are jointly taken up, as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Brief facts of the cases as per averments of the appeals are that by virtue of introduction of certain amendments, notified on 04.10.2016, in the relevant rules and policy of alleged favoritism, resulted into infringement of their right to promotions and their premature retirement due to reduction into the age limit of three categories of services i.e. Subedar Major, Subedar and Naib Subedar by keeping at bay the rest of respondents at bay bringing the matter into the notice of the Federal Service Tribunal. Feeling aggrieved, they filed departmental appeals but the same were not responded, hence, the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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15

Service Appeal No 449/2020 titled "Abdullah Jan versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No 15289/2020 titled "Jan Alam versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others" decided on 11.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal Peshawar.

replies raising therein numerous legal and factual objections.

The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants and learned Deputy District Attorney for respondents.

05. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney controverted the same by supporting the impugned order(s).

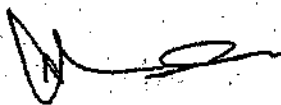
06. From the arguments, only two points for determining of these appeals have emerged by the Tribunal, which are as under:


1. According to the contention of the appellants, vide impugned order dated 09.07.2016 of the Political Agent Bajaur, Seven (07) Subedars were retired w.e.f 20.10.2016; whereas, the appellant had retired w.e.f 30.05.2017, therefore, posts were available but the appellants were not promoted.

2. The appellants contended that they were prematurely retired as they had allegedly three months left from their retirement.

06. As to the first point, mooted before us, the District Attorney produced copy of judgment in Writ Petition

Page 2

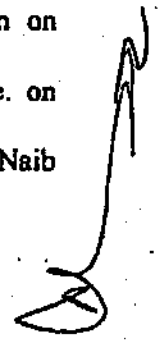


ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Service Appeal No. 4549/2020 titled "Abdullah Jan versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others", and Service Appeal No. 13289/2020 titled "Jan Alam versus The Secretary Home & Tribal Affairs Department Peshawar, Central Civil Secretariat, Khyber Pakhtunkhwa, Peshawar and others" decided on 11.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal Peshawar.

No.4039-P/2016 dated 23.05.2017. The District Attorney also produced copy of order sheet dated 01.11.2016 passed in Writ Petition No.4039-P/2016 and operation of schedule No. III & IV of the minutes dated 21.07.2016 to the extent of petitioner be kept suspended. He explained that the Subedars, seven in number, could not have been retired on 20.10.2016 because of suspension order in the above referred writ petition, therefore, their posts were not vacant as alleged by the appellants. This situation could not have been controverted by the appellants. This contention of the appellants cannot be, therefore, considered being not well-founded.

07. The other point agitated before us is that there were left three months before the appellants could retire but they were prematurely retired. In this respect, we observed that there is no denial of the fact that tenure service of Naib Subedar is Seven (07) years. The appellants were admittedly promoted to the post of Naib Subedars on different dates i.e. Mr. Abdullah Jan on 30.12.2009 and Mr. Jan Alam on 31.05.2010, and they had retired w.e.f 30.05.2017 i.e. on completion of seven (07) years service tenure as Naib Subedars, as per Rule-17 of the relevant rules.



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of
 Number of
 Paying
 19-09-2024
 30/-
 30/-
 6-8
 18-09-2024

Member (Judicial)

RASHIDA BANO

Chairman

KALIM ARSHAD KHAN

Certified to be true copy
 Khuzdar District
 Service Tribunal
 Peshawar

September, 2024.

our hands and the seal of the Tribunal on this 10th day of

09. Pronounced in open Court at Peshawar and given under

file of connected appeal. Consign.




dismissed with costs. Copy of this judgment be placed on

08. In view of the above, instant service appeals are

Alfiaz Durrani, Member, Central Civil Services Tribunal, Peshawar and
 others decided on 11.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan,
 Chairman, and Mr. Rashida Bano, Member Judicial, Higher Postsecondary Service Tribunal,
 Peshawar.

(17)

(24)

55619	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈریٹ: ضیاء الدین خان	PESHAWAR BAR ASSOCIATION
بار کونسل ایسوسی ایشن نمبر: 9856-10-BC	
رابطہ نمبر: 803358931 / 03459116368	
	

بہدالت جناب: جنم دکنو خیر ان سروس مینجمنٹ کمپنی کے چٹاورد

جناب: عبدالرشید خان	دعویٰ:
	علت نمبر:
	مورخ:
	جز:
	تھان:

بنام
سٹیٹ بینک آف پاکستان

باعتبار آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کا ردی متعلقہ
 آن مقام کے لیے ضیاء الدین خان ایڈووکیٹ کے نام سے درخواست کی گئی ہے کہ وہ
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوفی مقدمہ میں کارروائی کا مکمل اہتمام کیا گیا ہے اور
 راضی نامہ کرنے و تقرریاں دیکھ کر جواب دہی قبول اور درجہ اولیٰ کی تصدیق
 زوریں پر دستخط کر کے کا اہتمام ہوگا، نیز بصورت عدم تصدیق یا تاخیر یا تاویل کی صورت میں
 دائر کرنے اور اپیل اور ترقی و پیروی کے اہتمام اور اس کے لئے ضرورت مند ہونے پر ہر ممکن یا جزوی
 کارروائی کے واسطے کارروائی کی یا اہتمام یا اس کے لئے ہرگز ہرگز کارروائی اور صاحب
 مقرر شدہ کو وہی جملہ اخراجات حاصل ہوں گے اور اس کا سہارا منسوخ و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہوگا اس کے سبب سے جو کوئی نقصان یا خسار ہوگا وہ صاحب
 باہر ہو تو وکیل صاحب باہر ہوگا۔

المقام: 10/10/2024

عبدالرشید خان

مقام: ضیاء الدین خان کے لئے منظور ہے۔

ZIA-UD-DIN KHAN
 Advocate
 High Court Federal Shariat
 Court of Peshawar

ڈاک اس بات کی ضمانت دے گا کہ اس کا اصل قابل قبول ہے۔

EXTRAORDINARY
GOVERNMENT

Amend B (26-28)

REGISTERED NO. PIII

26



GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 5th NOVEMBER, 2024.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 5th November, 2024:

No. PA/Khyber Pakhtunkhwa/Bills-15/2024/14143.— The Khyber Pakhtunkhwa Service Tribunals (Amendment) Bill, 2024 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 24th October, 2024 and assented to by the Governor of the Khyber Pakhtunkhwa on 31st October, 2024 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS (AMENDMENT) ACT, 2024. (KHYBER PAKHTUNKHWA ACT NO. XII OF 2024)

*(First published after having received the assent of the Governor of the
Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa.
(Extraordinary), dated the 5th November, 2024).*

AN
ACT

further to amend the Khyber Pakhtunkhwa
Service Tribunals Act, 1974.

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974), for the purposes hereinafter appearing:

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. **Short title and commencement.**—(1) This Act may be called the Khyber Pakhtunkhwa Service Tribunals (Amendment) Act, 2024.

(2) It shall come into force at once.

2. **Amendment of section 3 of the Khyber Pakhtunkhwa Act No. I of 1974.**---In the Khyber Pakhtunkhwa Service Tribunal Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974), hereinafter referred to as the "said Act", in section 3:-

(a) in sub-section (3), for clause (b), the following shall be substituted, namely:

"(b) six members, three of whom shall be from amongst District and Sessions Judges and three from amongst civil servants in BPS-20 or above."; and

(b) after sub-section (6), the following new sub-section shall be added, namely:

"(7) At any time when the Chairman of the Tribunal is unable to perform the functions of his office, due to any cause or the office of the Chairman is vacant, the senior most judicial member of the Tribunal shall act as Chairman, till the Chairman resumes his office or a regular Chairman is appointed, as the case may be."

3. **Amendment of section 7 of the Khyber Pakhtunkhwa Act No. I of 1974.**---In the said Act, in section 7:-

(a) in sub-section (2):-

(i) in clause (b), after the semi colon, appearing at the end, the word "and" shall be added;

(ii) in clause (c) the semi colon and the word "and" shall be replaced with full stop; and

(iii) clause (d) shall be deleted; and

(b) after sub-section (3), the following new sub-section shall be added, namely:

"(4) All the executions, pending before the Tribunal, shall be disposed of in a manner as may be determined by Government."

4. **Insertion of new sections 7A in the Khyber Pakhtunkhwa Act No. I of 1974.**---In the said Act, after section 7, the following new section shall be inserted, namely:

"7A. Review.---(1) Any party, considering himself aggrieved by judgment or order of the Tribunal, from which an appeal is allowed under this Act, but no such appeal has been preferred, may file a review petition to the Tribunal, within thirty days of the judgment or order, so passed, on the following grounds:

- (a) discovery of new and important matter or evidence, which, after exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time, when the order was passed;
 - (b) on account of some mistake or error, apparent on the face of record; or
 - (c) for any other sufficient cause.
- (2) The Tribunal shall decide the review petition within sixty days.
- (3) The Tribunal, while disposing of the review petition, may confirm, set aside, vary or modify its judgment or order."

**BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

(SYED WIQAR SHAH)
Acting Secretary
Provincial Assembly of Khyber Pakhtunkhwa

71790




پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈریس: ضیاء الرحمن خان

بار کونسل ایسوسی ایشن نمبر: 10-9856

رابطہ نمبر: 03459110368 / 03035893180

PESHAWAR BAR ASSOCIATION

بعدالت جناب: صہبہ صہبہ خاتون سے سیدہ سہیلہ بیگم کے لیے پشاور

منجانب: عبداللہ خان

دعویٰ:

علت نمبر:

مورد:

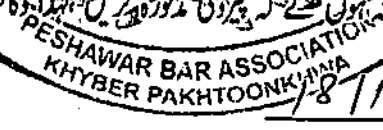
جرم:

تھانہ:

بنام
سیدہ سہیلہ بیگم

باعت تحریر آئکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کے ضیاء الرحمن خان اور سہیلہ بیگم کے درمیان کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقررات فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی تالیف و لکھنے یا ایمل کی برائگی اور منسوخی، نیز دائر کرنے اپیل کرانی و نظر ثانی و پیروی کیسے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے ہی نام سے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ ذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساتھ میں منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب اٹھانے مقدمہ کے سبب سے ہوگا اس کی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب چاہندے ہوگی جسے کہ پیروی مذکورہ کریں، لہذا کالت نامہ لکھ دیا تاکہ سند رہے



المرقوم: 12024 / 11 / 8

العبد عبداللہ خان واہد العبد

مقام پشاور Accepted by

نوٹ: اس کالت نامہ کی ذمہ داری ماحض قبول ہوگی۔

(Handwritten Signature)