FORM OF ORDER SHEET

Form-A

Court of

Case No.-_

Date of order proceedings

26/11/2020

2.

S.No.

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 15157 /2020
Order or other proceedings with signature of judge
3
The appeal presented today by Mr. Arshad Khan Advocate may be entered in the Institution Register and put to the Learned Member for
proper order please.
REGISTRAR)

This case is entrusted to S. Bench for preliminary hearing to be put

up there on 0403/4

MEMBER(J)

02.03.2021

Due to general strike on the call of Khyber Pakhtunkhwa Bar Counsel, learned counsel for appellant is not available today, therefore, the appeal is adjourned to 27.07.2021 on which date file to come up for preliminary arguments before S.B. [,

> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.__

Abdul Aziz PSHT(BPS-15), Beesak Gadoon Swabi.

.....Appellant

<u>Verses</u>

The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar & Others......Respondents

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Dated: /11/2020

pellant

THROUGH

Arshad Khan Advocate

Note : Other Spare Copies will be provided after regular hearing.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. l^{J} /2020 Abdul Aziz PSHT(BPS-15), Beesak Gadoon Swabi.

Khyber Pakhtukhwa Service Tribunal Diary No 15

.....Appellant

<u>Verses</u>

1-The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.

2-The secretary (E&SE), Department Khyber Pakhtunkhwa Peshawar.

3-The secretary Finance Department Khyber Pakhtunkhwa Peshawar.

4-The Accountant General, Khyber PakhtunkhwaPeshawar.

5- The Director (E&SE), Department Khyber Pakhtunkhwa Peshawar.

.....Respondents

APPEAL UNDER SECTION -4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGAL AND UNLAWFUL DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER VACATION AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

<u>PRAYER.</u>

الاستيلية

That on acceptance of this appeal the respondents may kindly be ilocito-dadirected not to make deduction of conveyance allowance during the winter & summer vacations and make the payment of all outstanding amount of iconveyance allowance which have been dedicated previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

RESPECTFULLY SHEWETH: <u>ON FACTS:</u>

1. That the appellant is serving in the Elementary and Secondary Education Department as PSHT (BPS-15) quite efficiency and up to the entire satisfaction of the superiors.

2. That the Conveyance Allowance is admissible to all the Civil Servants and to this effect a Notification NO. FD (PRC) 1-1/2011 dated 20/12/2012 whereby the Conveyance Allowance for employees working in BPs 1 to 15 were enhance / revised while employees from BPS-16 to 19 have been treated under the previous Notification by not

- enhancing their conveyance allowance. Copy of Notification dated 20/12/2012 are attached as annexure **.....A**.
 - 3. That appellant was receiving the Conveyance allowance as admissible under the law and rules but the respondents without any valid and justifiable reason stopped /deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. Copy of the Salary Slips of working /Serving month

- That the similar nature cases with regard to conveyance allowance have been accepted by this Honourable Service Tribunal vide S.A No. 1452/2019 dated 11/11/2019 and many other cases. Copy of the judgment dated 11/11/2019 is attached as annexure......D.
- 5. That the appellant filed departmental appeal against the illegal action of deduction of Conveyance allowance, but the same has not been responded by the respondents within statutory period of ninety days......**E**.
- 6. That appellant feeling aggrieved from the action of the respondents regarding deduction of Conveyance allowance in Vacation period/months filled Department appeal but no reply has been received so far. That feeling aggrieved and having no other remedy file the instant service appeal on the following grounds:-

GROUNDS:-

- A. That an action of the respondents regarding deduction of the conveyance allowance for vacations period / months is illegal against the law, facts and norms of natural justice.
- B. That the appellant have not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C. That the action of the respondent is without any legal authority discriminatory and clear violation of fundamental rights duly conferred by the Constitution and is liable to declared is null and void.
- D. That there is cleared difference between leave and vacation as leave is applied by the civil servant in the light Government servant revised leave rules 1989 while the vacation are always announced by the Government, therefore under the law and rules the appellant fully entitled for the grant of conveyance during vacation period.
- E. That the Government Servant revised leave rules 1989clearly explained that the civil servant who avail the vacation are allowed only one leave in a month where is the other civil servant may avail 4 days leave in colander months and the same are credit to his account in this way he may avail 48 days earned leave with fully pay, where is government servants to avail vacations such is appellant is allowed one day leave in a month and 12 days in a year and earned leave for 12 days in a year for credit to his account and there is no question of dedication of conveyance allowance lost sight this legal aspect and illegally without any authority started the recovery and deduction of conveyance allowance from the appellant.
- F. That is the act of the respondent is illegal, unconstitutional, without any legal authority and not only discriminatory but the result of Malafiede on the part of respondents.

- G. That appellant has vested right of equal treatment before law and the act of the respondents to deprived the appellant on the conveyance allowance is unconstitutional and clear violation of fundamental right.
- H. That according to government servant revised leave rules 1989 vacations or holly days and are leave of any kind, therefore the deduction of conveyance allowance and vacation is against the law and rules.
- I. That according Article 38 (e) of the Constitution of Islamic Republic of Pakistan 1973 the state is bound to reduce disparity in the income and earning of individual including person in the service of federation therefore in the light the said Article the appellant is fully entitled for the grant of fully conveyance allowance during vacations.
- J. Those similar natures cases with regard to conveyance allowance have been accepted by this Honourable Service Tribunal vide S.A No. 1452/2019 and many other cases.
- K. That the appellant seeks permission of this Honourable to raise any other grounds at the time arguments.

It is therefore, most humbly prayed the appeal of the appellant may be accepted as prayed for.

Hant

Through

Dated 22/11/2020

Arshad Khan

&

Shahzad Shahid

Advocates Peshawar. 0345 6030980

<u>Affidavit</u>

I Abdul Aziz PSHT(BPS-15), Beesak Gadoon Swabi.

GPS

hereby solemnly affirm and declared that contents of this appeal is correct to the best of my knowledge and nothing has been concealed from this Honourable and has not been filed earlier similar nature case before this Honourable Tribunal.

MUHAMA OAT

Deponent

FINANCE DEPARTMENT (REGUALTION WING)

NO.FD/SO(SR-II)/52/2012 Dated Peshawar the: 20.12.2012

From

To:

The Secretary to Govt: of Khyber Pakhtunkhwa. Finance Department, Peshawar.

1. All administrative Secretaries to Govt: of Khyber Pakhtunkhwa.

2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa

3. The Secretary to Governor, Khyber Pakhtunkhwa.

The Secretary to Chief Minister, Khyber Pakhunkhwa. 4.

The Secretary, Provincial Assembly, Khyber Pakhtunkhwa. 5.

6. All Heads of attached Departments in Khyber Pakhtunkhwa

7. All District Coordination Officers of Khyber Pakhtunkhwa.

S. All Political Agents/District & Session Judge in Khyber Pakhtunkhwa.

9. The Registrar Peshawar High Court, Peshawar.

10. The Chairman Public Service Commission, Khyber Pakhtunkhwa

11. The Chairman, Service Tribunal, Khyber Pakhunkhwa.

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE Subject CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA. GOVERNMENT BPS-1-19

Dear Sir.

The Government of Khyber Pakhunkhwa has been pleased to enhance/revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants Govt: of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1st September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain unchanged.

S.No.	BPS		Existing Rate (PM)	Revised Rate (PM).
1.	1-4		Rs. 1.500/-	Rs. 1,700/-
2.	5-10	<u> </u>	Rs. 1,500/-	Rs_1,840/-
3.	11-15		Rs. 2.000/-	Rs. 2,720/-
4.	16-19	•••	Rs. 5,000/-	Rs. 5,000/-

Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

'our Faithfully

(Sahibzada Saeed Ahmad) Secretary Finance

Endst No. FD/SO(SR-II)8-52/2012 Dated Peshawar the 20th December, 2012

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(REGULATION WING)
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VERSUS

- 1- The Government of Klyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar. 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
 - 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 5- The Director (E&SE) Department, Knyber Pakhtunkhwa, Peshawar. ...RESPONDENTS

APPEAL UDNER SECTION-4 OF THE KHYBER-PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED THE RESPONDENTS BY ILLEGALLY UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING WINTER & SUMMER VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

That on acceptance of this appeal the respondents may PICAYER: kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted Encate-day previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in

Registrar favor of the appellant. 91/01/N-C

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R/SHEWETH:

AT, TES IGN FACTS: 4- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency Enablished and up to the entire satisfaction of the superiors. SELE:

2- That the Conveyance Allowance is admissible to all the civil servant and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later ion vide revised Notification date: 20.12.2012 whereby the conveyance allowance for employee



Dist. Govt. NWFP-Provincial District Accounts Office Sawabi

Monthly Salary Statement (September-2019)



Personal Information of Mr ABDUL AZIZ d/w/s of ALLAH DIN

Personnel Number: 00235525 - CNIC: 13089517184 NTN 0 Date of Birth: 18.12.1970 Entry into Govt. Service: 14.01.1993

Length of Service 26 Years 08 Months 018 Days

Employment Category: Active Permanent

Designation: PRIMARY SCHOOL HEAD TEACH DDO Code: SU6236-Government Primary Schools (Male) Topi, Swabi

80004531-DISTRICT GOVERNMENT KHYBE

Payroll Section: 003 GPF Section: 001 Cash Center: 30 GPF A/C No: Interest Applied: Yes, GPF Balance: Vendor Number: -Pay and Allowances: Pay scale: BPS For - 2017

. . . Pay Scale Type: Civil BPS: 15 Pay Stage: 15

132,148.00

Wage type	Amount	Wage type	Amount
0001 Basić Pay	36,070.00	1000 House Rent Allowance	2,349.00
210 Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
2148 15% Adhoc Relief All-2013	797.00	2199 Adhoc Relief Allow @10%	535.00
211 Adhoc Relief All 2016 10%	2,742.00	2224 Adhoc Relief All 2017 10%	3,607.00
2247 Adhoc Relief All 2018 10%	3,607.00	2264 Adhoc Relief All 2019 10%	3,607.00
eductions - General			

Deductions - General

1 (1) (1) (1) (1) (1) (1) (1) (1) (1) (1		A	<u>.</u>		
Wage type	·	<u>Amount</u>	i.	Wage type	Amount
3015 GPF Subscription		-2,890.00	3501	Benevolent Fund	-600.00
3609. Income Tax				Emp.Edu. Fund KPK	-125.00
4004 R. Benefits & Death Comp:		-600.00			0.00

Deductions - Loans and Advances

			<u> </u>		A CARLEN AND A CARL AND	
Loan	Descr	iption		Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal			157,500.00	-4.500.00	99.000.00
A H			2			33,000.00

Deductions # Income Tax

Payable: 4,31	6.35 Recovere	d till September-2019	521.00 Exem	pted: 1725:53 Recoverab	ole: 2,069.82
Gross Pay (Rs.):	57.670.00				
	5,,070.00	Deductions: (Rs.):	-8,940.00	Net Pay: (Rs.): 48,7	24.00

Payee Name: ABDUL AZIZ

Account Number: 2039-7

Bank Details: NATIONAL BANK OF PAKISTAN, 230503 TOPI BRANCH TOPI BRANCH, SWABI

Leaves: **Opening Balance:** Availed:

	• •					i shi ka si k			
Permanent Address:	VILL /	AND PO SW	ABI		<u> </u>				1 1243 1 1213
City: SWABI	÷		Domicile:	NW - Khvb	er Pakhtunkhwa	1. 2. 7	Houri	The Statuce Mo	Official
Temp. Address:		۰. بە		- <u>-</u>		· · · · · · ·			
City:		, ông	Émail:						

Earned

(232428/25.09.2019/22:35:48) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

> Sec. Buch . <u>.</u> . . .

Balańce:

APPEAL NO. 1452 /2019

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Mr. Maqsad Hayat, SCT (BPS-16), GHS Masho Gagar, Peshawar.

VERSUS

APPE

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar. 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar. 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar. RESPONDENTS

APPEAL UDNER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OF THE RESPONDENTS BY UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING APPELLANT VACATIONS AND AGAINST NO ACTION TAKEN ON THE тне APPELLANT DEPARTMENTAL APPEAL OF STATUTORY PERIOD OF NINETY DAYS.

That on acceptance of this appeal the respondents may PRAYER: kindly be directed not to make deduction of conveyance allowance during vacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance which have been deducted Filedto-daypreviously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in

Registrar favor of the appellant.

R/SHEWETH: TESTON FACTS:

24/10/19

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 \sim 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency Packinghows and up to the entire satisfaction of the superiors.

Tribunal, 2- That the Conveyance Allowance is admissible to all the civil servant and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14.07.2011 was issued. That later ion vide revised Notification dater 20.12.2012 whereby the conveyance allowance for employee

Affested

Learned counsel referred to the judgment passed by learned Federal Service Tribunal in Appeal No. 1888(R)CS/2016 which was handed down on 03.12.2018. Through the said judgment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his entitlement and the deduction already made from him was to be reimbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in

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11.11.2019

the case of appellant. Learned counsel, when confronted with the proposition that the issue, in essence, was dilated upon by the Federal Service Tribunal and, more particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the judgment of Peshawar High Court, the appellant will have no cavil about disposal of instant appeal.

The record suggests that while handing down judgment in the Writ Petition preferred by the appellant, the Honourable High Court not only expounded the definition of "Pay" as well as "Salary" but also entitlement of a civil servant for the Conveyance Allowance during the period of vacations. It is important to note that the respondents were represented before the High Court during the proceedings.

In view of the above noted facts and circumstances and in order to protect the appellant from a fresh round of lifigation which may protract over a formidable period, the appeal in hand is disposed of with observation that the judgment of Honourable Peshawar High Court passed observation that the judgment of Honourable Peshawar High Court passed in Writ Petitions including W.P. No. 3162-P/2019 shall be honoured and implemented by the respondents within shortest possible time. The implemented by the respondents within shortest possible time. The appellant shall, however, be at liberty to seek remedy in accordance with a law in case his grievance is not redressed by the respondents within a reasonable time.

File be consigned to the record.

ANNOUNCE

11.11.2019

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Chairman

To,

The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTALAPPEALAGAINSTTHEIMPUGNEDACTIONOFTHE CONCERNEDAUTHORITY BY THE ILLEGALLY AND UNLAWFULLYDEDUCTION,THECONVEYANCE, ALLOWANCEDURING WINTER & SUMMER VACATIONS

Respected sir,

With due respect it is stated that i am the employee of your good self Department and is serving as PSHT(BPS15) quite efficiency and up to the entire Satisfaction of the superiors. It is stated for kind information that conveyance allowance is admissible to all the civil servants and to this effect a Notification No. FD (PRC) 1-1/2011 dated 14/07/2011 was issued. Later on vide revised Notification dated 20/12/2012 whereby the conveyance allowance for the employee working in BPS 1 to 15 were enhance/revised while employee from BPS-16 to 19 have been treated under the previous Notification by not enhancing their Conveyance allowance. Respected Sir, I was receiving the Conveyance allowance as admissible under the law and rues but the concerned authority without any valid and justified reasons stopped/ deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for leave period. One of the employees of Education Department in Islamabad filed service appeal No 1888 (R) CS/2016 before the federal service Tribunal, Islamabad regarding conveyance allowance which was accepted by the Honourable service Tribunal vide judgment dated 03/12/2018 that i am also the similar employee of Education Department and under the principle of consistency I am also entitled for the similar treatment meted out in the above mentioned service appeal but the concerned authority is not walling to issued/grant the same Conveyance allowance which is granting to other employees. Copy attached. I am feeling aggrieved from the action of the concerned authority regarding deduction of conveyance allowance in vacations period/months preferred this Department appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal concerned authority may very kindly be directed the conveyance allowance may not be deducted from my monthly salary during winter & summer vacations.

Dated: 30/07/2020

Your obediently

Abdul Aziz PSHT(BPS-15),

"aner F." Page 11 بعدالت م ٢٨ سروس فرد مرد ال سدل Mr Abdul Azj3 2 يمنحاً ن مورجه مقدم دعوى Folucation Dept 7. باعث تحريراً نكر مقدمه مندرجه عنوان بالاميس اپن طرف ے داسطے پيروي وجواب دہي وکل کاروائي متعلقہ كيلي المشركان المرد وتدي آن مقام متيساعر مقرر کرے اقرار کیاجاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامه کرنے وتقرر ثالث وفیصلہ پر حلف دیتے جواب دہی اورا قبال دعویٰ اور 7 Of UN بصورت د گری کرنے اجراءاور وصولی چیک وروپ په ارعرضی دعویٰ اور درخواست ہرشم کی تصدیق زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری کیطرفہ یا بیل کی برامدگ AL اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر تانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمہ مذکور کے کل یاجزوی کاردائی کے داسطے اور دکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بجائے تقر رکااختیار ہوگا۔اورصاحب مقرر شدہ کوبھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پر داختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہرجانہ النوائے مقدمہ کے سب ، وہوگا کوئی تاریخ بیشی مقام دورہ پر ہو یا حد سے باہر ہوتو دکیل صاحب پابند ہوں گے۔ کہ بیروی مذکور کریں۔لہٰذا وکالت نامہ کھوریا کہ سندر ہے۔ الرتوم £20 Aud 0 Attested S Accepted کے لئے منظور ہے۔ 10 Lin مقام پ ستیشنز <u>ک</u> مار ب چوك مشتكر كايشاور شي نون: 2220193 Mob: 0345-9223239