FORM OF ORDER SHEET

Form

Court of 860 Case No.-21 /2021 S.No. Order or other proceedings with signature of judge Date of order proceedings 1 2 3 The appeal presented today by Mr. Mujeebullah Advocate may [4]/01/2021 1.ce entered in the Institution Register and put to the Learned Member for croper order please. REGISTRAR This case is entrusted to 5. Bench for preliminary nearing to be put 2up there on <u>5.2.2-</u> MEMBER(J) 03.03.2021 The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 28.07.2021. Reader



Dated:

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No...... /2021

#### HAROON RASHEED

VS

# Govt of KP through Secretary E & SE) & others

### INDEX OF DOCUMENTS

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Through

M. Ashfaq KhanAkhunkhail

Syed Zeshan Khan

& Majeebullah

Advocates Khalid & Law Associates 46-C, 2<sup>nd</sup> Four, Cantonment Plaza, Peshawar Saddar Cell No. 0333-8522332 Ashfaqkhan182@gmail.com

# **BEFORE THE KHYBER PAKHTUNK7H7WA SERVICE TRIBUNAL**

<u>PESHAWAR</u>

#### HAROON RASHEED

Presently serving as PST (BPS 12) in GPS SORI PAWDir Lower

Khyber Pakhtukhwa Service Tribunal

Diary }

(APPELLANT)

#### VERSUS

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

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

### <u>PRAYER:</u>

That on acceptance of this Appeal the Respondents may 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 previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

## **R/SHEWETH:**

FACTS:

- 1. That the Appellant is serving in the Elementary and Secondary Education department as Primary School Teacher (BPS-12) quiet efficiently 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 14-07-2011 was issued.

3. That later on the finance department enhanced/ revise the rate of conveyance Allowance to-dayvide Notification dated 20-12-2012 for civil servants (BPS-1-15) but Respondents have treated the Appellants under the previous notification by not enhancing their conveyance istrar allowance.

#### (Copy of the Notification are attached as annexure A)

- 4. That Appellant was receiving the conveyance allowances as admissible under the law and rules but the Respondents without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. (Copies of the Salary slips of working/serving month and vacations deduction period are attached as annexure B&C)
- 5. That similar placed employees of Elementary &Secondary Education Department (hereinafter referred as E &S Education Department) approached this August Tribunal and their grievance was redressed vide judgment dated 11-11-2019. (Copy of Judgment dated 11/11/2019 is attached as annexure D)
- 6. That being aggrieved form the illegal action of deduction of conveyance allowance, the Appellant preferred departmental appeal before the competent authority but the same has not been responded by Respondents within the statutory period of ninety days. (Copy of departmental appeal is annexed as annexure E)
- 7. That feeling aggrieved from action and inaction of the Respondents and having no other remedy available, hence, the Appellant approaches this Hon'ble Court inter alia on the following grounds.

#### **GROUNDS:**

- A. That the action and inaction of the Respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.
- B. That the Appellant has 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 Respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly guaranteed by the Constitution and is
  liable to be declared as null and void.
- D. That there is clear difference between leave and vacation as leave is governed by Government Servant Revised Leave Rules,1981 while vacations are always announced by the Government, therefore under the law and Rules the Appellant is fully entitle for the grant of conveyance allowance during vacation period.
- E. That the Government Servants Revised Leave Rules,1981 clearly, explain that the civil servants who avail the vacations are allowed only one leave in a month whereas, the other civil servants may avail 04 days leave in a calendar months and the same are credited to his account and in this way he may avail 48 days earned leave with full pay, whereas the Government servants to avail vacation such as appellant is allowed one day leave in a month and twelve(12) days in a year and earned leave for twelve days in a year are credited to his account and there is no question of deduction of conveyance allowance lost sight of this legal aspects and illegally and without any authority started the recovery and deduction of conveyance allowance from appellant.
- F. That as the act of the Respondents is illegal, unconstitutional, without any legal authority and discriminatory hence, not tenable in the eye of law.
- G. That Appellant has vested right of equal treatment before law and the act of the Respondents to deprive the Appellants from the conveyance/allowance is unconstitutional and clear violation of fundamental rights.
- H. That according to Government Servants Revised leave Rules,1981 vacations are holidays and not leave of any kind,therefore,the deduction of conveyance allowance in vacations is against the law and rules.
- 1. That according to 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 individuals including persons in the services of the federation, therefore in light of the said Article the Appellant is fully entitle for the grant of conveyance allowance during vacations.
- J. That the Appellants seeks permission of this Hon'ble Court to raise any other grounds available at the time of arguments.

In wake of above submission, it is, therefore, must humbly prayed that on acceptance of this Appeal the Respondents may 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 previously with all back benefits Or

Any other remedy which this august Tribunal deems just and proper that may also be awarded in favor of the Appellant.

Through

ppellant

M. Ashfaq KhanAkhunkhail Syed Zeshan Khan & Mureebullah ADVOCATES

Khalid & Law Associates 46-C, 2nd Four, Cantonment Plaza, Peshawar Saddar

#### CERTIFICATE

As per instruction of my client prior to the present one, no such like appeal has been filed by the Appellant before this Hon'ble Court.

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FINANCE DEPARTMENT REGULATIONINTHIC

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## GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

3/1

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

From

# The Secretary to Govt of Khyber Pakhtunkhwa Finance Department, Peshawar

Τo,

- 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
- 4. The Secretary to Chief Minister, Khyber Pakhtunkhwa
- 5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa
- 6. All Heads of attached Departments in Khyber Pakhtunkhwa
- 7. All District Coordination Officers of Khyber Pakhtunkhwa
- 8. 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 Pakhtunkhwa

# Subject:- <u>REVISION IN THE RATE OF CONVEYANCE ALLOWANCE</u> <u>FOR THE CIVIL EMPLOYEES OF THE KHYBER</u> <u>PAKHTUNKHWA PROVINCIAL GOVERNMENT BPS-1-19</u>

Dear Sir,

The Government of Khyber Pakhtunkhwa 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 1<sup>st</sup> September, 2012 at the following rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain un-changed.

S. No	BPS	Existing Rate (PM)	Revised Rate (PM)
1.		Rs. 1500/-	Rs. 1700/-
2.	5-10	Rs. 1500/-	Rs. 1840/-
3.	11-15	Rs. 2000/-	Rs. 2720/-
4.	16-19	Rs. 5000/-	Rs. 5000/-

2. 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.

Your Faithfully

(Sahibzada Saeed Ahmacppy Secretary Finance

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

## Annexure D

The Director, (E&SE) Department,

Khyber Pakhtunkhwa, Peshawar.

#### SUBJECT: DEPARMENTAL APPEAL AGAINST THE IMPUGNED ACTION OF THE CONCERNED AUTHORITY ILLEGALLY BY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING 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 PST (BPS-12) quite efficiently 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 working in 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 rules but the concerned authority without any valid and justifiable reasons stopped/deducted the payment of conveyance allowance under the wrong and illegal pretext that the same is not allowed for the leave period. One of the employee 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 honorable service tribunal vide its judgment dated 03.12.2018. That I also the similar employee of education department and under the principle of consistency I am also entitled for the same treatment meted out in the above mentioned service appeal but the concerned authority is not willing to issue/grant the same conveyance allowance which is granted 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 Departmental appeal before your good self.

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

Dated: 16.08.2020

urs Sincerely **DON RASHEED** PST (BPS 12) in GPS SORI PAWDir Lower

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То

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRUS

# PESHAWAR

# APPEAL NO. 1452 /2019

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

APPELLANT

# VERSUS

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

2- The Secretary (E8SE) Department' Khyber Pakhtunkhwa, Peshawar 3- The Secretary Finance Department, Knyber 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 ACTION OF THE RESPONDENTS BY THEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & SUMMER

VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE

STATUTORY PERIOD OF NINETY DAYS.

# PRAYER:

That on acceptance of this appeal the respondents may 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 Fledte-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.

# R/SHEWETH: TESTONTACTS:

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t= That the appellant is serving in the elementary and second education department as Certified Teacher (BPS-15) quite efficiency Paking kines and up to the entire satisfaction of the superiors. Pice Tribunal

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 14.07.2011 was issued. That later ion vide revised Notflication dated 20.12.2012 whereby the conveyance allowance for employees

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# Dist. Govt. KP-Provincial District Accounts Office Dir at Timargar Monthly Salary Statement (July-2020)



# Personal Information of Mr HARUN UR RASHID d/w/s of SHER RAHMAN

Personnel Number: 00808641	CNIC: 1530539502163	NTN:
Date of Birth: 13.01.1990	Entry into Govt. Service: 24.03.2016	Length of Service: 04 Years 04 Months 009 Days

# Employment Category: Active Temporary

IOOL TEACHER	80674790-DISTRICT GOVERNMENT KHYBE				
Dir Lower					
GPF Section: 001	Cash Center:	. ,			
Interest Applied: Yes	<b>GPF Balance:</b>		28,860.00		
Pay scale: BPS For - 2017	Pay Scale Type: Civil	BPS: 12	Pay Stage: 4		
	Interest Applied: Yes	t Dir Lower GPF Section: 001 Interest Applied: Yes <b>GPF Balance:</b>	t Dir Lower GPF Section: 001 Interest Applied: Yes <b>GPF Balance:</b>		

Wage type		Amount		Wage type	Amount
0001	Basic Pay	17,160.00	1000	House Rent Allowance	1,961.00
1300	Medical Allowance	1,500.00	1923	UAA-OTHER 20%(1-15)	1,000.00
2148	15% Adhoc Relief All-2013	350.00	2199	Adhoc Relief Allow @10%	226.00
2211	Adhoc Relief All 2016 10%	1,194.00	2224	Adhoc Relief All 2017 10%	1,7 <u>16.00</u>
2247	Adhoc Relief All 2018 10%	1,716.00	2264	Adhoc Relief All 2019 10%	1,716.00

#### **Deductions - General**

Wage type		Amount	Wage type	Amount
3012	GPF Subscription	-2,220.00	3501 Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00	4004 R. Benefits & Death Comp:	-600.00

#### Deductions - Loans and Advances

Loan	۰.	Descri	ption	Principal amount	Deduction	Balance
Deductions -	Incom	e Tax				
Payable:	0.00	) Recovere	d till JUL-2020:	).00 Exempted	1: 0.00 Recovera	ble: 0.00
Gross Pay (F	Rs.):	28,539.00	Deductions: (Rs.):	-3,545.00	Net Pay: (Rs.): 24,9	994.00
Account Nu	mber: 01		3ER, 080144 I.B.Br. Kar	nbur Lower Dir. I.B.Br.	Kambur Lower Dir., Low	er Dir
Leaves:	Oper	ning Balance:	Availed:	Earned:	Balance:	
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Permanent A			<b>S</b>			
City: BABO	GAM		Domicile: -		Housing Status	: No Official
	GAM		Domicile: - Email: harun03000	@gmail.com	$\left( \right)$	AN
City: BABO Temp. Addre	GAM			@gmail.com	Housing Status	AN

#### Dist. Govt. KP-Provincial District Accounts Office Dir at Timargar Monthly Salary Statement (November-2020)



#### Personal Information of Mr HARUN UR RASHID d/w/s of SHER RAHMAN

Personnel Number: 00808641 Date of Birth: 13.01.1990 CNIC: 1530539502163 Entry into Govt. Service: 24.03.2016 NTN:

Length of Service: 04 Years 08 Months 008 Days

## **Employment Category: Active Temporary**

Designation: PRIMARY SCHOOL TEACHERDDO Code: DA6318-District Dir LowerPayroll Section: 001GPF Section: 001GPF A/C No:Interest Applied: YesVendor Number: -Pay and Allowances:Pay scale: BPS For - 2017

80674790-DISTRICT GOVERNMENT KHYBE

Cash Center:

Pay Scale Type: Civil

GPF Balance:

39,472.00

BPS: 12 Pay Stage: 4

	Wage type	Amount	Wage type	Amount
0001	Basic Pay	17,160.00	1000 House Rent Allowance	1,961.00
1210	Convey Allowance 2005	2,856.00	1300 Medical Allowance	1,500.00
1923	UAA-OTHER 20%(1-15)	1,000.00	2148 15% Adhoc Relief All-2013	350.00
2199	Adhoc Relief Allow @10%	226.00	2211 Adhoc Relief All 2016 10%	1,194.00
2224	Adhoc Relief All 2017 10%	1,716.00	2247 Adhoc Relief All 2018 10%	1,716.00
2264	Adhoc Relief All 2019 10%	1,716.00		0.00

#### **Deductions - General**

Wage type		Amount		Wage type	Amount
3012	GPF Subscription	-2,220.00	3501	Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00	4004	R. Benefits & Death Comp:	-600.00

#### **Deductions - Loans and Advances**

Loan		Descri	ption	Principal amoun	t Deduction	Balance
<b>Deductions</b> Payable:	- Income Tax 0.00	Recovere	d till NOV-2020:	0.00 Exempt	ed: 0.00 Recov	verable: 0.00
Gross Pay (	Rs.): 31,39	5.00	Deductions: (Rs.):	-3,545.00	Net Pay: (Rs.):	27,850.00
Account Nu	e: HARUN UR 1 umber: 0137500 ls: THE BANK Opening Ba	5 OF KHYE	BER, 080144 I.B.Br. Kar Availed:	mbur Lower Dir. I.B.E Earned:	Br. Kambur Lower Dir., 1 Balance:	Lower Dir
Permanent City: BABO			Domicile: -		Housing St	atus: No Official
Temp. Add City:	•		Email: harun03000	@gmail.com		JETED COPY

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Counsel for the appellant present: Learned counsel referred to the budgment/passed by learned Eederals

Service Tribunal-in Appeal No. 1888(R) (S/2016 which was handed down on 03.12.2016 Through the said augment the issue of payment of Conveyance Allowance to a civil servant during summer and winter vacations was held to be within his envitement, 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 and 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, nore particularly, by the Honourable Peshawar High Court in the case of appellant, stated that in case the respondents are required to execute the appellant, stated that in case the respondents are required to execute the indgment 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 Hanourable High Court not only expounded the definition of "Pay" as well as "Salary". Dut 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 litigation which may protract over a formidable period, the appeals in hand is disposed of with 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 appellant shall, however, be at liberty to seek remedy in accordance with law in case his grievance is not redressed by the respondents within a reasonable time.

File berconsigned to, the record

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المريس المرين المريس فتحل محر محر محر محر محر المنا السرار in the hast Grant og tat de pli Haboon 6 (200 ) <u>}</u> بالتصنيف بت يد مندر وعزوان بالاس ابني الم صحيح والسط بروي وحواب دي وكل كارد إلى متعلقة أز مقام لهادر كميسلط الخرابيعاق الوكل، فحري العمايل وكيت بالي كورك كودك مقرر مرم إطابيك جا، ستر كرم، جب تموشوت كومقديس كمال كاروابي كاكادل اينة بارتبوكا يسبروك ل حيا حب كوكريد دايمني المدد آغرزنال: و"بيمار برياف يست جوارد بالى الداد بالى در والى الدر المروز والتري كمدن المراء أور والرلى جيك ورويد الدر بطوى المحوى الور ارد مواريد ... برته م کی تقسین ا در اس بریز تخط کرایے کا اختیار تو کا دستر بھرز معدم سرحری یا دسگری کمطرفر یا ایل کی براس کی اديست في البرقاد مرينة المرال دلاران ومروئ مرينة كالفتيات براما ادربهمولية هرورية متدير متكرم یے کن یا جُزوں مار دائی سے داستا اور در کہا یا تشار قالوی کو این جرام یا این مجا اس تقریراً استار ہو ا در داند. بر مقرر شده بالم توجن و بن جمار مذكر رو بالا اختباط بن مام ل بول شر الرواس كالمساخة سروا خته منطور ترول بيسار ووران مقدم في جوير وترجان التوا, مناسب من مسابب من التي التي مسمون وترك من تريشتون بول مسم تعير برفايا وخرجه بركى وصولى سيفد كالمعنى اختيار بجراك أكركونى قامت فيبشى مقاتم ورزره ير بهو با مدست المر بحد أو وكمل صاحب با مند مر بول الم كم مرد كالد كرد كري. لہل دکالت نامہ رکھ دیا کہ سار سے ۔ ار مولى بو مولى بو 03338522332 63018521721