

03.06.2020

Counsel for the appellant present.

1. At the outset learned counsel referred to copy of order dated 11.11.2019 passed in Appeal No. 1452/2019 (annexure-C) and requested for disposal of instant appeal also in terms of the order.
2. It shall be useful for the purpose to reproduce hereunder the contents of referred order dated 11.11.2019:-

"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 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 litigation 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 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 be consigned to the record."

3. Having identical features instant appeal is disposed of accordingly. File be consigned to the record.

Chairman 



ANNOUNCED
03.06.2020

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 4076 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/05/2020	<p>The appeal of Mr. Mihrab Khan presented today by Mr. Fazal Shah Mohmand, Advocate, may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up on <u>03-6-20</u></p> <p style="text-align: right;"> MEMBER</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 4076/2020.

Mihrab Khan.....**Appellant**

V E R S U S

Director and Others.....**Respondents**

I N D E X

S. No	Description of Documents	Annexure	Pages
1.	Service appeal		1-2
2.	Copy of Pay Slip	A	3
3.	Copy of departmental appeal	B	4
4.	Copy of Judgment	C	5-9
5.	Wakalat Nama		10

Dated:-24-03-2020

Mihrab Khan
Appellant

Through

Fazal Shah Mohmand
Fazal Shah Mohmand
Advocate Supreme Court.

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell#
0301 8804841

Email:- fazalshahmohmand@gmail.com.

Note:

Spare copies will be provided after the admission of Service Appeal.

Fazal Shah Mohmand
Advocate

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 4076 /2020

Mihrab Khan, Senior Certified Teacher (SCT), Govt. High School(GHS),
Lund Khwar, District Mardan.....**Appellant**

Khyber Pakhtunkhwa
Service Tribunal

V E R S U S

Diary No. 3432

Dated 5-5-20

1. Director Elementary and Secondary Education, KPK Peshawar.
2. District Education Officer (Male) Mardan.
3. Secretary, Elementary and Secondary Education, KPK Peshawar.
4. Govt. of Khyber Pakhtunkhwa through Secretary Finance Department, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa Peshawar.

.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ACTION OF RESPONDENTS OF
ILLEGALLY DEDUCTING CONVEYANCE ALLOWANCE FROM
THE APPELLANT DURING SUMMAR AND WINTER
VACATIONS AND PAYMENT OF DEDUCTED AMOUNT MADE
TO THE APPELLANT MADE FROM HIM IN THIS RESPECT,
FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT
HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE
OF THE STATUTORY PERIOD OF NINETY DAYS.**

PRAYER:-

On acceptance of this appeal the respondents may kindly be directed not to deduct from the appellant the Conveyance allowance during the summer and winter vacations and pay the appellant the illegally deducted amount in this respect.

Respectfully Submitted:-

1. That the appellant is serving in the respondent department and since then he performed his duties with honesty and full devotion with spotless service career.
2. That the department in which the appellant is serving is vacation department and the conveyance allowance is deducted from the appellant during summer and Winter vacations in violation of **Rule 82 (b)** of the Fundamental Rules 1922, according to which **vacation counts as duty. (Copy of Pay Slip is enclosed as Annexure A).**
3. That the appellant approached respondents for directing respondents to pay him the conveyance allowance during summer and winter vacations with further directions to the respondents to pay the appellant the already illegally deducted amount in this

filed to-day
Registrar
5/5/20

regard, vide departmental appeal which has not been responded so far despite the lapse of the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure B).**

4. That this action of the respondents of not paying the appellant the conveyance allowance during the summer and winter vacations and not paying the appellant the illegally deducted amount in this respect, is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the omissions and commissions of the respondents are illegal and void ab-initio.
- B. That **Rule 82 (b)** of the Fundamental Rules 1922, is very much clear on the point, according to which **vacation counts as duty**, hence deduction of conveyance allowance during the Summer and Winter vacations is illegal and against the **Rule 82 (b)** of the Fundamental Rules 1922.
- C. That even this issue was agitated before the Sindh Service Tribunal, Federal Service Tribunal and even before this honorable Tribunal which appeals were accepted and even that judgments have been implemented. **(Copy of Judgment is enclosed as Annexure C).**
- D. That the illegal deduction of the conveyance allowances during vacations cause monetary loss to the appellant and he is subjected to monetary loss illegally.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-24-03-2020

Through


Appellant


Fazal Shah Mohmand
Advocate Supreme Court.

Dist. Govt. NWFP-Provincial
District Accounts Office Mardan
Monthly Salary Statement (January-2020)



-3-



'A'

Personal Information of Mr MIHRAB KHAN d/w/s of SARFARAZ KHAN

Personnel Number: 00125378 CNIC: 1610222849165 NTN: 3201926-2
 Date of Birth: 18.03.1965 Entry into Govt. Service: 04.10.1988 Length of Service: 31 Years 03 Months 029 Days

Employment Category: Active Temporary

Designation: SENIOR CERTIFIED TEACHER 80003462-DISTRICT GOVERNMENT KHYBE

DDO-Code: MR6068-PRINCIPAL G.H.S LUND KHWAR MARDAN

Payroll Section: 003 GPF Section: 001 Cash Center: 0

GPF A/C No: EDUMR005199 Interest Applied: Yes **GPF Balance:** 691,588.00

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 26

Wage type		Amount	Wage type		Amount
0001	Basic Pay	58,430.00	1000	House Rent Allowance	2,727.00
1210	Convey Allowance 2005	5,000.00	1947	Medical Allow 15% (16-22)	2,396.00
2148	15% Adhoc Relief All-2013	1,195.00	2199	Adhoc Relief Allow @10%	892.00
2211	Adhoc Relief All 2016 10%	4,532.00	2224	Adhoc Relief All 2017 10%	5,843.00
2247	Adhoc Relief All 2018 10%	5,843.00	2264	Adhoc Relief All 2019 10%	5,843.00

Deductions - General

Wage type		Amount	Wage type		Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,703.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-650.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	500,000.00	-25,000.00	375,000.00

Deductions - Income Tax

Payable: 25,126.55 Recovered till January-2020: 10,330.00 Exempted: 6281.60 Recoverable: 8,514.95

Gross Pay (Rs.): 92,701.00 Deductions: (Rs.): -31,643.00 Net Pay: (Rs.): 61,058.00

Payee Name: MIHRAB KHAN

Account Number: PLS00000004389

Bank Details: MCB BANK LIMITED, 240315 MCB LUND KHWARLUND KHWAR MCB LUND KHWARLUND KHWAR.

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address: VILL KARIM ABAD PO LUNDKHWAR TEH TAKHT B

City: MARDAN Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City: Email:

(130696/06.02.2020/11:09:01) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

ATTESTED
TO BE TRUE COPY

-4- "B

**BEFORE THE DIRECTOR ELEMENTARY AND SECONDARY
EDUCATION KPKPESHAWAR**

**Subject:- Departmental Appeal for the payment of
Conveyance Allowance during Summer and Winter
vacations and declaring the deduction of the same as
illegal and unlawful**

Respectfully Submitted:-

1. That the appellant is serving as SCT...at I GHS Lund khwar and the department in which he is serving is vacation department wherein the conveyance allowance cannot be deducted as per law and rules. Even the deduction of conveyance has been declared illegal by the Service Tribunal in many appeals. The deduction of conveyance allowance as such during summer and winter vacations is illegal and the appellant is entitled to be paid the deducted amount in this respect.

It is therefore prayed that on acceptance of this appeal, Conveyance Allowance during summer and winter vacations may not be deducted from the appellant and pay back the appellant the deducted amount in this respect.

Dated:-17-12-2019  Mirrab Khan SCT GHS Lund khwar Mardan.

ATTESTED
TO BE TRUE COPY

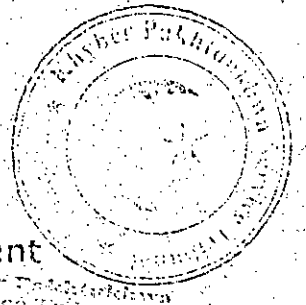
-5- "C"

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1085 /2016.

Sabz Ali Khan, Associate Professor, BPS-19,
(History cum Civics), Govt. College Peshawar.

.....Appellant



V E R S U S

Diary No. 1117
Dated 24-10-2016

1. Chief Secretary, Govt. of KPK Peshawar.
2. Secretary, Higher Education Department, Govt. of KPK Peshawar.
3. Director, Higher Education Department, Govt. of KPK Peshawar.
4. Accountant General, Govt. of KPK Peshawar.

.....Respondents

5 *Secretary Finance Deptt KPK Peshawar*

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR DIRECTING RESPONDENTS TO PAY THE APPELLANT THE CONVEYANCE ALLOWANCE DURING SUMMER AND WINTER VACATIONS, DECLARING THE DEDUCTION OF CONVEYANCE ALLOWENCE DURING SUMMER AND WINTER VACATIONS, AS ILLEGAL UNLAWFUL, WITHOUT LAWFUL AUTHORITY AND OF NO LEGAL EFFECT, FOR WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 28-06-2016 HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the respondents may kindly be directed to pay the appellant the conveyance allowance during the summer and winter vacations declaring the deduction of conveyance allowance during the summer and winter vacations as illegal, unlawful, without lawful authority and of no legal effect.

~~led to day~~
~~Registrar~~
21/10/16

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
25/10/16

**ATTESTED
TO BE TRUE COPY**

This may also be observed that the judgment of Federal Service Tribunal in Appeal No.1888(R) CS/2016 reflects that in an identical nature case, the Federal Service Tribunal has held that the conveyance allowance is payable to the appellants w.e.f the vacations of the year when the departmental appeal/representation was filed by the appellants.

File be consigned to the record room.

(Mian Muhammad)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

Announced
19.02.2020

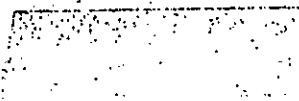
Certified to be true copy

[Faint, mostly illegible text from a stamp or form, possibly containing dates and names]

(Mian Muhammad)
Member (E)

(Muhammad Hamid Mughal)
Member (J)

ATTESTED
TO BE TRUE COPY



8.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



APPEAL NO. 1452 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1500

Dated 24/10/2019

Mr. Maqсад Hayat/SCT (BPS-16),
GHS Masho Gacur, Peshawar.....

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 Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 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 ILLEGALLY 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 previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day
Registrar
24/10/19

R/SHEWETH:

ON FACTS:

- 1- That the appellant is serving in the elementary and secondary education department as Certified Teacher (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 14.07.2011 was issued. That later on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

Registered to-day
11/11/19

ATTESTED
TO BE TRUE COPY

VAKALATNAMA

IN THE COURT OF KP SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2020

Mihrab Khan

.....Appellant

VERSUS

Director and others


..... Respondents

I/We, the undersigned, do hereby appoint and constitute **Fazal Shah Mohmand** Advocate Supreme Court & **Rabia Muzaffar** Advocate Peshawar. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I/We hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 24-03-2020.

ACCEPTED BY:


FAZAL SHAH MOHMAND
Advocate
Supreme Court of Pakistan


RABIA MUZAFFAR
Advocate Peshawar


CLIENT(S)

OFFICE:-Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301
8804841. (Clerk) Cell# 03339214136

Email: - FazalShahMohmand@gmail.com.