

FORM OF ORDER SHEET




Court of _____

Case No. -

849

/2021

21

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|------------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 14/01/2021 | <p>The appeal presented today by Mr. Mujeebullah Advocate may be entered in the Institution Register and put to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2- | 08-02-21 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03-3-21</u></p> <p style="text-align: right;"> MEMBER(J)</p> |
| 03.03.2021 | | <p>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.</p> <p style="text-align: right;"> Reader</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No..... /2021

NOOR HABIB KHAN

VS

Govt of KP through Secretary E & SE) & others

INDEX OF DOCUMENTS

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Appellant

Through

M. Ashfaq Khan Akhunkhail

Syed Zeshan Khan

&

Mujeebullah

Advocates

Khalid & Law Associates

46-C, 2nd Floor, Cantonment Plaza,

Peshawar Saddar

Cell No. 0333-8522332

Ashfaqkhan182@gmail.com

Dated:

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 849...../2021

Diary No. 979

NOOR HABIB KHAN

Presently serving as PST (BPS 12) in GPS MASHIN KORONA Dir Lower

Dated 14/11/2021

(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)

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.

R/SHEWETH:

FACIS:

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 vide 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 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 from 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.

Filed to-day
Registrar
14/11/21

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.
- I. 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

M. Ashfaq Khan Akhunkhail Syed Zeshan Khan & Mujeebullah
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.

ADVOCATE

A-4

GOVERNMENT OF KYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION UNIT)

NO. FCSO/SR/REG/520012
Dated: Peshawar, 20-12-2012

From: The Secretary to Government, Finance Department,
Peshawar.

To: Administrative Secretary to Government, Peshawar
Tax Section Member, Board of Revenue, Peshawar
The Secretary to Government, Peshawar
The Secretary to Government, Peshawar
The Secretary to Government, Peshawar
All Members Attached Department, Peshawar
The Chairman, Board of Revenue, Peshawar
The Registrar, Peshawar
The Chairman, Public Service Commission, Peshawar
The Chairman, Service Tribunal, Peshawar

REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE
CIVIL EMPLOYEES OF THE KYBER PAKHTUNKHWA PROVINCIAL
GOVERNMENT BPS-10

The Government of Peshawar has been pleased to increase the rate of conveyance allowance for all the Provincial Civil Servants of BPS-10 (including those in BPS-10) from Rs. 1,700/- to the following rates. However, the conveyance allowance for employees in BPS-10 BPS-10

| S.NO | BPS | EXISTING RATE (PKR) | REVISED RATE (PKR) |
|------|-------|---------------------|--------------------|
| 1 | 1-4 | RS. 500/- | RS. 1,700/- |
| 2 | 5-10 | RS. 1,000/- | RS. 2,720/- |
| 3 | 11-15 | RS. 2,000/- | RS. 5,150/- |
| 4 | 16-19 | RS. 4,000/- | RS. 10,300/- |

Conveyance Allowance at the above rates with effect from 01-01-2013. Those BPS-10 and 10 officers who have not been sanctioned official residence

Yours faithfully,

[Signature]

(Sd/-) *[Signature]*
To Be

ATTESTED

Encl: NO. FCSO/SR/REG/520012

A copy is forwarded for information to the

Secretary to Government, Peshawar
Secretary to Government, Peshawar
Secretary to Government, Peshawar

[Signature]
To Be

3/1

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

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

From

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

To,

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

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 1st 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. | 1-4 | 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 Ahmad)
Secretary Finance

ATTESTED
Be True Copy

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

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

B



Personal Information of Mr NOOR HABIB KHAN d/w/s of MUHAMMAD YAR

Personnel Number: 00859350 CNIC: 1530350027465 NTN:
 Date of Birth: 10.01.1992 Entry into Govt. Service: 20.03.2017 Length of Service: 03 Years 04 Months 013 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL TEACHER 80001409-DISTRICT GOVERNMENT KHYBE

DDO Code: DA6140-GOVT. PRIMARY SCHOOLS (M) SAMARBAGH

Payroll Section: 001 GPF Section: 001 Cash Center:

GPF A/C No: 859350 Interest Applied: Yes **GPF Balance: 45,143.00**

Vendor Number: -

Pay and Allowances: Pay scale: BFS For - 2017 Pay Scale Type: Civil BFS: 12 Pay Stage: 3

| Wage type | | Amount | Wage type | | Amount |
|-----------|---------------------------|-----------|-----------|---------------------------|----------|
| 9001 | Basic Pay | 16,200.00 | 1000 | House Rent Allowance | 1,961.00 |
| 1300 | Medical Allowance | 1,500.00 | 1923 | UAA-OTHER 20%(1-15) | 1,000.00 |
| 2211 | Adhoc Relief All 2016 10% | 1,114.00 | 2224 | Adhoc Relief All 2017 10% | 1,620.00 |
| 2247 | Adhoc Relief All 2018 10% | 1,620.00 | 2264 | Adhoc Relief All 2019 10% | 1,620.00 |

Deductions - General

| Wage type | | Amount | Wage type | | Amount |
|-----------|-------------------|-----------|-----------|---------------------------|---------|
| 3612 | 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 | Description | Principal amount | Deduction | Balance |
|------|-------------|------------------|-----------|---------|
| | | | | |

Deductions - Income Tax

Payable: 0.00 Recovered till JUL-2020: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 26,635.00 Deductions: (Rs.): -3,545.00 Net Pay: (Rs.): 23,090.00

Payee Name: NOOR HABIB KHAN

Account Number: 0109000243663123

Bank Details: UNIFIED BANK LIMITED, 211157 UBL MAYAR UBL MAYAR, MARDAN

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: ZARAI MAYAR SAMARBAGH Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City: Email: noorhabibkhanpst@gmail.com

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To

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

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ACTION OF THE CONCERNED AUTHORITY BY ILLEGALLY 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 during the winter & summer vacations.

Dated: 16.08.2020

Yours Sincerely


NOOR HABIB KHAN

PST (BPS 12) in GPS MASHIN KORONA Dir Lower

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



APPEAL NO. 1452 /2019

Mr. Maqsd 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 (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:

ATTENTION FACTS:

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 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

NOTED
To Be Filed

Appeal No. 1452/2019
Mazbad Hayat vs Govt

(8)

11.11.2019

Counsel for the appellant present

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.

Chairman

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filed to be true copy
EXAMINER
Hydr. Pakistanchwa
Service Tribunal
Peshawar

ANNOUNCED

11.11.2019

M

[Signature]

قانون تجارت چھاپا سروس ٹریڈنگ کمپنی پرائیویٹ لمیٹڈ لاہور

مخبر نام ایڈریس

Grant of K.R. etc نام Noor Habib Khan

دعویٰ اپیل

باعتبار سروس ٹریڈنگ کمپنی

⊙

⊙

مقرر شدہ و معنون بالا میں ایسی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ ان مقام ایسا اور
 کیلئے محمد رفیق خان افرخیل، حمید اللہ انور کیٹ، ہائی کورٹ کو وکیل مقرر کرنے کے اقرار کیا جاتا ہے کہ صاحب
 موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے پر اصرار اور دائر ثالث و تیسرا برصاف
 یعنی جواب دہی اور اقبال دعویٰ اور لہجہ سوز ڈگری کرنے اور دوسری چیک در پیہ اور مرضی دعویٰ اور درخواست
 ہر قسم کی تقدیر اور اس پر غور کرنے کا اختیار ہوگا نیز لہجہ سوز عدم پیروی یا ڈگری بلکہ طرفہ اپیل کی برآمدگی
 اور پیروی سوزی نیز دائر کرنے اپیل نگران و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مناکہ
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے کمرہ یا اپنی بجائے تھری کا اختیار ہوگا
 اور وہ اپنے مقرر شدہ پر کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا شناختہ پر داغہ منقولہ
 قبول ہوگا اور دوران مقدمہ میں جو خرچہ و پر جانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب
 موصوف ہوں گے نیز لہجہ سوز و فرسب کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ
 پر ہو یا مدت باہر ہو تو وکیل صاحب یا ہمارے نمائندوں کے کہ پیروی مذکور کریں۔

لہذا رکالت نامہ دیکھ دیا کہ مستند ہے۔

الرفیق

القلم

القلم

القلم

Noor

حمید اللہ انور

محمد رفیق خان افرخیل

ATTESTED To Be True Copy

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