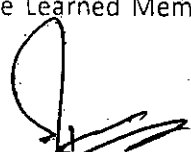




FORM OF ORDER SHEET

Court of _____

Case No. 870 /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>3.3.21</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

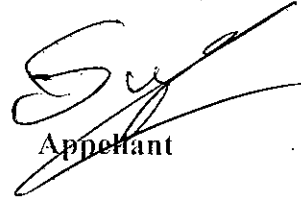
Syed Fazal Aziz

VS

Govt of KP through Secretary E & SE) & others

INDEX OF DOCUMENTS

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal	1-2
2.	Copy of Notification dated 20/12/2012	A	3
3.	Copies of Pay slips	B&C	4-5
4.	Copy of Departmental appeal/representation	D	6
5.	Copy of Judgment dated 11/11/2019	E	7-8
6.	Wakalatnama		9


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

Service Appeal No. 870...../2021

Syed Fazal Aziz

Presently serving as PST (BPS 12) in GPS CHINAR KOT Dir Lower

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 999

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:

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 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.
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

GROUND:

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

Syed Zeshan Khan
 Appellant

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.

Syed Zeshan Khan
 ADVOCATE

A-4

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FCS/ISR/HR/5200/12
Dated: Peshawar, 20-12-2012

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

To: All Administrative Officers to Govt. of Khyber Pakhtunkhwa
The School Masters' Board of Khyber Pakhtunkhwa
The Secretary to Government of Khyber Pakhtunkhwa
The Secretary to Government of Khyber Pakhtunkhwa
The Secretary to Government of Khyber Pakhtunkhwa
All Heads of Attached Departments of Khyber Pakhtunkhwa
All District Commissioners of Khyber Pakhtunkhwa
All Political Agents of Khyber Pakhtunkhwa
The Registrar, Peshawar High Court, Peshawar
The Chairman, Public Service Commission, Khyber Pakhtunkhwa
The Chairman, Service Tribunal, Peshawar, Peshawar.

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

DEAR SIR,

The Government of Khyber Pakhtunkhwa has been pleased to increase the rate of conveyance allowance admissible to all the Provincial Civil Servants of Khyber Pakhtunkhwa working in BPS-10 (BPS-10) from September 2012 at following rates. However the conveyance allowance for employees in BPS-10 to BPS-19 will remain unchanged.

S.NO	BPS	EXISTING RATE (PKR)	REVISED RATE (PKR)
1	1-4	RS. 1500/-	RS. 1700/-
2	5-10	RS. 2000/-	RS. 2200/-
3	11-15	RS. 2500/-	RS. 2700/-
4	16-19	RS. 3000/-	RS. 3200/-

Conveyance Allowance at the above rates per month shall be admissible to those BPS-10, 11 and 12 officers who have not been sanctioned official residence.

Yours Faithfully,

(Signature)
Secretary, Finance

Encl: NO. FCS/ISR/HR/5200/12

A copy is forwarded for information of the

ATTESTED
To Be True Copy

Association (Chief) Khyber Pakhtunkhwa
Secretary to Government of Khyber Pakhtunkhwa
Finance Department

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 Saad Ahmad)
Secretary Finance

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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 (November-2020)

3



Personal Information of Mr SYED FAZAL AZIZ d/w/s of SYED MUSTAFA AHMAD

Personnel Number: 00915732

CNIC: 1530209878389

NTN:

Date of Birth: 05.06.1983

Entry into Govt. Service: 01.03.2019

Length of Service: 01 Years 09 Months 001 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL TEACHER

80674790-DISTRICT GOVERNMENT KHYBE

DDO Code: DA6318-District Dir Lower

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No: 915732

Interest Applied: Yes

GPF Balance:

0.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 12

Pay Stage: 0

Wage type		Amount	Wage type		Amount
0001	Basic Pay	13,320.00	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	2211	Adhoc Relief All 2016 10%	1,114.00
2224	Adhoc Relief All 2017 10%	1,332.00	2247	Adhoc Relief All 2018 10%	1,332.00
2264	Adhoc Relief All 2019 10%	1,332.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3501	Benevolent Fund	-600.00	3534	R. Ben & Death Comp Fresh	-600.00
3990	Emp.Edu. Fund KPK	-125.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

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

Gross Pay (Rs.): 25,747.00 Deductions: (Rs.): -1,325.00 Net Pay: (Rs.): 24,422.00

Payee Name: SYED FAZAL AZIZ

Account Number: 2032005

Bank Details: THE BANK OF KHYBER, 080144 I.B.Br. Kambur Lower Dir. I.B.Br. Kambur Lower Dir., Lower Dir

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: LAL QILLA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: sfaziz0346@gmail.com

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To Be True Copy

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



Personal Information of Mr SYED FAZAL AZIZ d/w/s of SYED MUSTAFA AHMAD

Personnel Number: 00915732

CNIC: 1530209878389

NTN:

Date of Birth: 05.06.1983

Entry into Govt. Service: 01.03.2019

Length of Service: 01 Years 05 Months 001 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL TEACHER

80674790-DISTRICT GOVERNMENT KHYBE

DDO Code: DA6318-District Dir Lower

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No: 915732

Interest Applied: Yes

GPF Balance:

0.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 12

Pay Stage: 0

Wage type		Amount	Wage type		Amount
0001	Basic Pay	13,320.00	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	2211	Adhoc Relief All 2016 10%	1,114.00
2224	Adhoc Relief All 2017 10%	1,332.00	2247	Adhoc Relief All 2018 10%	1,332.00
2264	Adhoc Relief All 2019 10%	1,332.00	5002	Adjustment House Rent	1,961.00
5011	Adj Conveyance Allowance	2,856.00	5012	Adjustment Medical All	1,500.00
5322	Adj Adhoc Relief All 2018	1,332.00	5336	Adj Adhoc Relief All 2019	1,332.00
5801	Adj Basic Pay	13,320.00	5887	Adj Unatract Area Allow	1,000.00
5975	Adj Adhoc Relief All 2016	1,114.00	5990	Adj Adhoc Relief All 2017	1,332.00

Deductions - General

Wage type		Amount	Wage type		Amount
3501	Benevolent Fund	-600.00	3534	R. Ben & Death Comp Fresh	-600.00
3990	Emp.Edu. Fund KPK	-125.00	6001	Adj Benevolent Fund	-600.00
6204	Adj. Emp.Edu. Fund KPK	-125.00	6217	Adj R. Ben & 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.): 51,494.00 Deductions: (Rs.): -2,650.00 Net Pay: (Rs.): 48,844.00

Payee Name: SYED FAZAL AZIZ

Account Number: 2032005

Bank Details: THE BANK OF KHYBER, 080144 I.B.Br. Kambur Lower Dir. I.B.Br. Kambur Lower Dir., Lower Dir

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: LAL QILLA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: sfaziz0346@gmail.com

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To Be True Copy

To

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

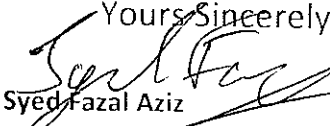
SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ACTION OF THE CONCERNED AUTHORITY BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE DURING WINTER & SUMMER VACATIONS.

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

Syed Fazal Aziz

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To Be True Copy

PST (BPS 12) in GPS CHINAR KOT Dir Lower

E 7

D-78-5

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 today
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

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True Copy

Signature

Appeal No 1452/2019
Marbad 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

filed to be true copy
SEYED MULLER
Hyderabad
Service Tribunal
Peshawar

ATTESTED
Chairman

ANNOUNCED

11.11.2019

M

[Signature]

