

Form- A

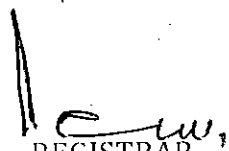

FORM OF ORDER SHEET

Court of _____

Case No. -

13616

/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/11/2020	<p>The appeal presented today by Mr. Shahzaullah Yousafzai 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> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/3/21</u></p> <p style="text-align: right;">MEMBER(J)</p>
01.03.2021		<p>The learned Member Judicial Mr. Muhammad Jamal Khan is on leave, therefore, the case is adjourned. To come up for the same before S.B on 26.07.2021.</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

APPEAL NO. _____/2020

GULISTAN SHAHZADA VS EDUCATION DEPARTMENT

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APPELLANT

THROUGH:


SHAHZULLAH YOUSAFZAI
ADVOCATE

Flat no 4, Upper Floor,
Juma khan plaza near FATA secretariat,
Warsak road, Peshawar
0302-8578851

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 13616/2020

Diary No. 14030

Dated 4/11/2020

Mr Gulistan Shahzada S/O Gul Faraz Khan, SPST (BPS-14) Personnel
No.00267848, GPS, Kattan Payeen, Dir
lower.....**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 THE 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:

ON FACTS:

- 1- That the appellant is serving in the elementary and secondary Education Department as senior primary school teacher (BPS-14) quite efficiently and up to the entire satisfaction of his 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 working in BPS 1 to 15 were enhance/revised while employees from BPS- 16 to 19 have been treated under the previous Notification by

Filed to-day
Registrar
4/11/20

not enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure..... **A.**

3- 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.**

4- That some employee of E&SE department approached to this august Tribunal against illegal deduction of conveyance allowance in different service appeal which were allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment 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 respondents within statutory period of ninety days. Copy of departmental appeal is annexed as annexure..... **E.**

6- That feeling aggrieved from action and inaction of the respondents and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

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 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 respondents is without any legal authority, discriminatory and in clear violation of fundamental rights duly conferred 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 vacations 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 for vacation period, the respondents while making the 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 the vested right of equal treatment before law and the act of the respondents to deprive the petitioners 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 petitioners seeks permission of this Honorable Court to raise any other grounds available at the time of arguments.

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

APPELLANT


Gulistan Shahzada

THROUGH:


Shahzullah Yousafzai

&


Kamran Khan advocates

BETTER COPY PAGE- 05

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 unchanged.

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

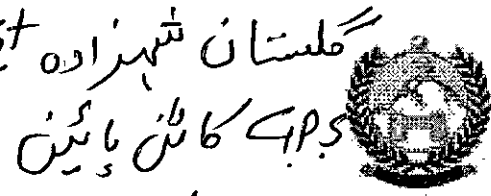
2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

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 (May-2020)



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Personal Information of Mr GULISTAN SHAH ZADA d/w/s of GUL FARAZ KHAN

Personnel Number: 00267848

CNIC: 10993105173

NTN: B-6

Date of Birth: 06.01.1975

Entry into Govt. Service: 24.06.1997

Length of Service: 22 Years 11 Months 009 Days

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TEA

80001412-DISTRICT GOVERNMENT KHYBE

DDO Code: DA6151-GOVT. PRIMARY SCHOOLS (M) TIMERGARA

Payroll Section: 001

GPF Section: 001

Cash Center: 29

GPF A/C No: EDUDA012220

Interest Applied: Yes

GPF Balance:

406,669.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil * BPS: 14

Pay Stage: 17

Wage type		Amount	Wage type		Amount
0001	Basic Pay	35,070.00	1000	House Rent Allowance	2,214.00
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	766.00
2199	Adhoc Relief Allow @10%	515.00	2211	Adhoc Relief All 2016 10%	2,644.00
2224	Adhoc Relief All 2017 10%	3,507.00	2247	Adhoc Relief All 2018 10%	3,507.00
2264	Adhoc Relief All 2019 10%	3,507.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-600.00
3609	Income Tax	-329.00	3990	Emp.Edu. Fund KPK	-125.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
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Deductions - Income Tax

Payable: 3,651.65 Recovered till MAY-2020: 2,410.00 Exempted: 912.77 Recoverable: 328.88

Gross Pay (Rs.): 57,086.00 Deductions: (Rs.): -4,274.00 Net Pay: (Rs.): 52,812.00

Payee Name: GULISTAN SHAH ZADA

Account Number: 1647-9

Bank Details: NATIONAL BANK OF PAKISTAN, 231869 NBP DIR AMLOOK DARA TALASH DIR, DIR

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL.BAGH DUSHKHEL

City: DIR LOWER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: gulistanshzd@gmail.com

ATTESTED

System generated document in accordance with APPM 4.6.12.9(SERVICES/29.05.2020/18:13:35/v2.0)

* All amounts are in Pak Rupees

* Errors & omissions excepted

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



Personal Information of Mr GULISTAN SHAH ZADA d/w/s of GUL FARAZ KHAN

Personnel Number: 00267848 CNIC: 10993105173 NTN:
 Date of Birth: 06.01.1975 Entry into Govt. Service: 24.06.1997 Length of Service: 22 Years 08 Months 007 Days

C-7

Employment Category: Active Temporary

Designation: SENIOR PRIMARY SCHOOL TEA 80001412-DISTRICT GOVERNMENT KHYBE
 DDO Code: DA6151-GOVT. PRIMARY SCHOOLS (M) TIMERGARA
 Payroll Section: 001 GPF Section: 001 Cash Center: 29
 GPF A/C No: EDUDA012220 Interest Applied: Yes **GPF Balance: 398,809.00**
 Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 14 Pay Stage: 17

Wage type		Amount	Wage type		Amount
0001	Basic Pay	35,070.00	1000	House Rent Allowance	2,214.00
1300	Medical Allowance	1,500.00	1923	UAA-OTHER 20%(1-15)	1,000.00
2148	15% Adhoc Relief All-2013	766.00	2199	Adhoc Relief Allow @10%	515.00
2211	Adhoc Relief All 2016 10%	2,644.00	2224	Adhoc Relief All 2017 10%	3,507.00
2247	Adhoc Relief All 2018 10%	3,507.00	2264	Adhoc Relief All 2019 10%	3,507.00

- Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-600.00
3609	Income Tax	-170.00	3990	Emp.Edu. Fund KPK	-125.00
4004	R. Benefits & Death Comp:	-600.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 2,871.70 Recovered till FEB-2020: 1,475.00 Exempted: 717.70 Recoverable: 679.00

Gross Pay (Rs.): 54,230.00 Deductions: (Rs.): -4,115.00 Net Pay: (Rs.): 50,115.00

Payee Name: GULISTAN SHAH ZADA

Account Number: 1647-9

Bank Details: NATIONAL BANK OF PAKISTAN, 231869 NBP DIR AMLOOK DARA TALASH DIR, DIR

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL.BAGH DUSHKHEL

City: DIR LOWER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: gulistanshzd@gmail.com

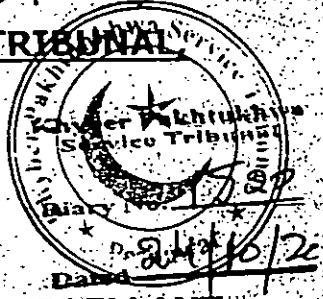
APPROVED

D-8

~~DEPT~~ B - (S)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1452 /2019



Mr. Maqсад 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:

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ATTENTION FACTS:

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
14/11/19

- 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

Appeal No. 1452/2019
Masood Hayat vs Govt

9

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

ANNOUNCED

11.11.2019

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

M

To

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

E-10

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 was the employee of your good self Department and is serving as SPST (BPS- 14) 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 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. 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 am 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 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 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: 23.07.2020

Your Obediently

Gulistan Shahzada
Gulistan Shahzada

SPST,GPS, Kattan Payeen, Dir lower.

Sr
ATTESTED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Culistan Shehzada (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

_____ (RESPONDENT)
EDUCATION DEPTT: _____ (DEFENDANT)

I/We Culistan Shehzada
Do hereby appoint and constitute **SHAHZULLAH
YOUSAFZAI, Advocate, Peshawar** to appear, plead, act,
compromise, withdraw or refer to arbitration for me/us as
my/our Counsel/Advocate in the above noted matter,
without any liability for his default and with the authority to
engage/appoint any other Advocate Counsel on my/our cost.
I/we authorize the said Advocate to deposit, withdraw and
receive on my/our behalf all sums and amounts payable or
deposited on my/our account in the above noted matter.

Dated. ____/____/2020

Shahzullah Yousafzai
CLIENT(S)

Shahzullah Yousafzai
ACCEPTED
SHAHZULLAH YOUSAFZAI

Kamran Khan
&
KAMRAN KHAN
ADVOCATES