## FORM OF ORDER SHEET

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S.No.	Date of order	Order or other proceedings with signature of judge
	proceedings	3
1	2	
1-	28/10/2020	The appeal presented today by Mr. Umar Farooq Advocate may be entered in the Institution Register and put to the Learned Member
	· . ·	for proper order please.
		REGISTRAR .
2		This case is entrusted to S. Bench for preliminary hearing to be put
		up there on 01 - 03 - 21
	• .	MEMBER(J)
-	·	
. 0	1.03.2021	The learned Member Judicial Mr. Muhammad Jamal Khar
0	· c	on leave, therefore, the case is adjourned. To come up for
0	· c	
0	· c	n leave, therefore, the case is adjourned. To come up for same before S.B on 26.07.2021.
0	· c	on leave, therefore, the case is adjourned. To come up for
0	· c	n leave, therefore, the case is adjourned. To come up for same before S.B on 26.07.2021.
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0	· c	leave, therefore, the case is adjourned. To come up for same before S.B on 26.07.2021.  Reader
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0	· c	leave, therefore, the case is adjourned. To come up for same before S.B on 26.07.2021.  Reader

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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APPEAL	ITU.		/202	_ , ,
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**AKBAR SHAH** 

VS

**EDUCATION DEPTT:** 

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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2.	Notification	Α	4
3.	Pay slips	B & C	5- 6
4.	Departmental appeal	<b>D</b>	7
5.	Service Tribunal judgment	E	8- 9
6.	Väkalatnama		10

THROUGH:

UMAR FAROOQ
ADOCATE HIGH COURT

APPELLANT

CELL NO 0313-8901647

Note: Sir,

Spare copies will be submitted After submission of the case.

### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 13037/2020 Khyher Pakhtukhwa Service Tribuital

Mr, AKBAR SHAH PST(BPS-15)
GMS MAIN MANDI, PSS Mohmond.
Personnel Number: 00103137

Diary No/3500

.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 of (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

  RESPONDENTS

APPEAL UNDER SECTION-4 OF THE OKHYBER 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 & Secondary Education Department as **PST (BPS-15)** quite efficiently and up to the entire satisfaction of their 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 not

20:12.2012 are attached as annexure......

enhancing their conveyance allowance. Copy of the Notification dated

- - 6- That the appellant also prayed to be treated through the principals of consistency for allowing such relief which was granted in appeal No 1452/2019 titled Maqsad Hayat versus Education Department in Judgment Dated 11.11.2019.
  - 7- That where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

### **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 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 applied by the Civil Servant in light Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the Government,

- therefore under the law and Rules the appellant fully entitled 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 aspect 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 not only discriminatory but is also the result of malafide on the part of respondents.
  - 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 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.

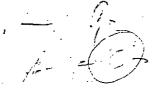
It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for under the golden principals of consistency.

> AKBAR SHAH THROUGH: ###

> > ÚMAR ÉAROOQ

APPELLANT

ADVOCATE HIGH COURT





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

NO. FD/SO(SR-II)/8-52/2012 Dated Peshawar the: 20-12-2012

From

The Secretary to Govi. of Khyber Pakhtuakhwa. Finance Desgrandet. Penhayear.

Τō.

All Administrative Segmentes to Gove of Kingles Pakintonishing.

The Senior Member, Board of Revenue, Whyber Pakhtualities.

The Secretary to Generally Knyber Pakitanians

The Secretary to Chief Minstell, Khyber Pakhantining.

The Secretary, Prayhdid Aspendiy Khilber Pakaturkhika 5.

All Heads of Attaches Departments in Krisher Pakhtunktivia

Ař, District Coordination Officerate Klystei Páklitenkinas.

এই Political Agents / District & Sergions Jurges in Khytter Pakil@প্রাধীক্ষর

The Registral Peshabat Hydrofotta Peshabit

The Chairman, Roblic Service Crawbeston, Khyber Pokhtunkiswa.

Tha Chairman, Sewates Telbanal, Köybar Pakhlunkhwa.

Subject

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

Dear Sir.

The Government of Khylie: Pakhturahyou has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provinces Gvil Servants, Govit of Mayber Perhandhay (violking to EPS-1 to EPS-15) wielf from 1° September, 2012 at 1 the following rates. However, the conveyance allowaries for employees in 675-15 to 6PS-19 will remain . . . Grananged.

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	Ps.2,000/-	Rs.2,720/-
. <u>= 4</u>	16-19	Rs.5,000/-	Rs.5,000/-

Conveyance Allowance at the applyorates per manth shall be admissible to those BPS-17; 18 and 19 differs who have not been sanctioned afficial vehicles.

Yours Faithfully.

Sahibzada Sacod Alymadi Secretary Finance

Endate NO. FIXSOISTE-Ups-52/2012

Dated Persuswan the 20th Description, 2012

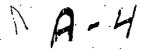
A Copy is forwarded for information to the:-

Accountant General Pander Pakhturkima, Pesigawat

Secretaries to Government of Punjab, Smith & Solopheten, Finance Department All Appresentation / Secret Abbandratus Bodies in Kinyber Pakhtunikhas

(BUYA SAITM)

Additional Second (ARM)



# GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGUALTION 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.
- S. 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 Govi: 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 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/-

Conveyance Allowance at the above rates per month shall be admissible to those BPS-17.
 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



Desig: PRIMARY SCHOOL TEACH(80949675) Grade: 15 NTN: Buckle No.: Gazetted/Non-Gazetted: N 00103137 AKBAR SHAH CNIC: 2140663473515 AMOUNT LOAN/FUND PRINCIPAL REPAID BALANCE AMOUNT DEDUCTIONS PAYMENTS 2,890.00-265,197.00 GPF#: 4033/CSS -0001 Basic Pay 34,740.00 3015 GPF Subscription INCOME TAX 2,300.40 253.00 2,047.60 2,349.00. 3501 Benevolent Fund 600.00-1000 House Rent Allowance 1,500.00 3990 Emp.Edu. Fund KPK 125.00-1300 Medical Allowance 40.00 4004 R. Benefits & Death C 1,052.00-1505 Charge Allowance 1,000.00 3609 Income Tax 205.00-1528 Unattractive Area A 2148 15% Adhoc Relief All 652.00 2199 Adhoc Relief Allow @ 436.00 2211 Adhoc Relief All 201 2,695.00 3,474.00 2224 Adhoc Relief All 201 3,474.00 2247 Adhoc Relief All 201 2264 Adhoc Relief All 201 3,474.00

GHALANAI

4,872.00-

UNITED BANK LIMITED

**PAYMENTS** 

3ranch Code:211384

53,834.00

GHALANAI

**DEDUCTIONS** 

**NET PAY** 

48,962.00 01.08.2019.31.08.2019

Accnt.No: 010-981

9

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





### Personal Information of Mr AKBAR SHAH d/w/s of MASHAH

Personnel Number: 00103137

CNIC: 2140663473515

Date of Birth: 10,09.1979

Entry into Govt. Service: 01.01.1999

NTN:

Length of Service: 21 Years 07 Months 001 Days

**Employment Category: Active Temporary** 

Designation: PRIMARY SCHOOL TEACHER

80926290-DISTRICT GOVERNMENT KHYBE

DDO Code: MG6013-DEO Primary Education Mohmand

Payroll Section: 001

GPF Section: 001

Cash Center: 42

204 205 20

GPF A/C No: 4033/CSS

Interest Applied: Yes

**GPF** Balance:

296,987.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil

**BPS: 15** 

Pay Stage: 15

	Wage type	Amount		Wage type	Amount
0001	Basic Pay	36,070.00	1000	House Rent Allowance	2,349.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
1505	Charge Allowance	40.00	1528	Unattractive Area Allow	1,000.00
2148	15% Adhoc Relief All-2013	652.00	2199	Adhoc Relief Allow @10%	436.00
2211	Adhoc Relief All 2016 10%	2,695.00	2224	Adhoc Relief All 2017 10%	3,607.00
2247	Adhoc Relief All 2018 10%	3,607.00	2264	Adhoc Relief All 2019 10%	3,607.00

### **Deductions - General**

	Wage type	Amount		Wage type	Amount
3/	GPF Subscription	-2,890.00	3501	Benevolent Fund	-600.00
3609	Income Tax	-316.00	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:

5,051.35

Recovered till JUL-2020:

316.00

Exempted: 1262.54

Recoverable:

3,472.81

Gross Pay (Rs.):

58,419.00

Deductions: (Rs.):

-4,531.00

Net Pay: (Rs.):

53,888.00

Payee Name: AKBAR SHAH Account Number: 138401009815

Bank Details: UNITED BANK LIMITED, 211384 GHALANAI GHALANAI,

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: GHALLANAI MOHMAND AGENCY

City: GHALLANAI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: akbarshahpstl@gmail.com

The Secretary (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-15) 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 ion 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-15 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 the august K.P.K service tribunal also allowed the restoration of the convence allowance in its judgment dated 11.11.2019 in appeal No 1452/2019 titled Magsad Hayat versus Education Derpartment Copy attached. 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 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: 07.0 62020

Your Obediently

AKBAR SHAH GMS MIAN MANDI

### UNKHWA SERVICE TRIBUNA BEFORE THE KHYBER PAKE

PESHAWAR

APPEAL NO. 1457 /2019

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

### **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 UDNER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED RESPONDENTS BY ILLEGALLY AND ACTION OF THE UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE OF THE APPELLANT DURING WINTER & VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN 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 Predicto-day previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in REGISTIAF favor of the appellant.

### 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 ion vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

2-14/18/16

Appeal No. 145.2/2019 Markad Hayat vs Giort 122

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 regord.

geshawat... ANNOUNCE

Carffield

11.11.2019

Kin uwa Se al, Chairman

### ΔTN

		AR
	OF 2020	
	(APPELLANT)	
AKBAR SHAH	(PLAINTIFF)	
	(PETITIONER	2)
	VERSUS	
	(RESPONDENT	')
Education Department	(DEFENDANT)	
	그런 아이는 되고 보는 중 되었다. 상황	
I/We <b>AKBAR SHAH</b>		
for me/us as my/our Counsel/ liability for his default and v	act, compromise, withdraw or refer to arbitr /Advocate in the above noted matter, without with the authority to engage/appoint any cost. I/we authorize the said Advocate to der	t an othe
for me/us as my/our Counsel/ liability for his default and washed and washed and my/our withdraw and receive on my/our account i	Advocate in the above noted matter, without with the authority to engage/appoint any cost. I/we authorize the said Advocate to depy/our behalf all sums and amounts payable	t an othe oosi
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for me/us as my/our Counsel/ liability for his default and washed and washed and my/our withdraw and receive on my/our account i	Advocate in the above noted matter, without with the authority to engage/appoint any cost. I/we authorize the said Advocate to deploy/our behalf all sums and amounts payable in the above noted matter.  CLIENT  ACCEPTED  UMAR FAROOQ	t an othe oosi

7