Form- A

FORM OF ORDER SHEET

Court of		
, -		
e No	15/05/0 /202	20

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/12/2020	The appeal presented today by Mr. Munfat Ali Yousafza
		Advocate may be entered in the Institution Register and put to the Learne
		Member for proper order please.
		REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on $\frac{0.4 - 0.3}{2.1}$
		MEMBER(J)
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(4.03.2021	Learned Member (J) is under transfer, therefore the
		case is adjourned to 29.07.2021 before S.B.
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL	NO.	 /2020 .
•		 ,

MUHAMMAD HASSAN KHAN VS

EDUCATION DEPTT:

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APPELLANT

THROUGH:

MUNFAT ALI YOUSAFZAI
ADVOCATE

CELL NO. 0344-9213367

Note: Sir,

Spare copies will be submitted MAfter submission of the case.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. <u>15650</u>/2020

MR. MUHAMMAD HASSAN KHAN, SPE (BPS-16) GHS GANDAF SWABI

Personnel Number: 00231009

ADDELLAN

Company No. 16187

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 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 & Secondary Education Department as **SPE** (**BPS-16**) 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

- 5. That some of teachers of different pay scale approached to this august Tribunal in different service appeals which allowed by this august tribunal vide its Judgment No 1452/2019 titled Maqsad Hayat versus Education Department Dated 11-11-2019...... E.
- 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 Judgement 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 pripeipals of consistency.

APPELLAN

MUHAMMAD HASSAN KHAN

THROUGH:

MUNFAT ALI YOUSAFZAI ADVOCATE



GOVERNMENT OF KHYBER PARHTUNKHWA FINANCE DEPARTMENT REGULATION WING

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

From

The Secretary to Gowl of Khyter Pashtucktwa Finance Department, Penhavear,

To:

All Administrative Services to Gev. of Kingler Pakittoniania.

The Scriot Member, Board of Revenue, Rhyber Pakhtus Pren.

The Secretary to Governor Krijber Pakhtinkawa The Secretary to Chief Misseer, Khijber Pakhtinkawa

The Secretary, Province Asserbly Khyber Pakaterkawa

All Heads of Altaened Departments in Knyhet Pakhtunkhava भार District Coordington Officerato Khyseli Pakiltonkines.

All Political Agents / District & Semicos Judges in Rhyber Parling/Rhyber

The Registrer Feshawar Hym Court. Peshawar

The Chaiman, Rubic Service Corverson, Shyber Pokhtur, Shwa.

The Obdirman, Servers Tribunal Kryper Rakhlunkhwa

Stiplest.

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

Dear Sir.

The Government of Khyber Pakhturathyra has been pleased to enfrance / ruvise the rate of Conveyance Allowance somissible to all the Provincial Civil Servants, Govern र्द अन्युक्तिक Pakhtunkhina (vanding कि BPS-1 (o'BPS-(t) w.e.Piron) ें Santamber, स्वीर से the following rates. However, the conveyance allowance for employees in SFS+15 to RPS+15 will remain verkhanged.

S.NO BPS	EXISTING RATE (PM) REVISED RATE (PM)
1. 14	Rs.1,500/- Rs.1,700/-
<u>2- 5-10</u>	Ps.1.500/- Rs.1.540/-
11-15	Rs.2,000/- Rs.2,720/-
16-19	Rs.5,000/- Rs.5,000/-

Conveyance Allowance at the adoversates per manth shall be admissible to those BPS-17, 18 and 19 officers who have not been sanctioned afficial vehicles

Yours Faithfully.

(Sahibzada Sacod Ahmad) ිපෙස්කy සිතුක්ල

Endan NO. FINSONSIGITES-52/2012

Unter Porginwan the 20th Bereinber, 2012

A Copy is forwarded for information to the:-

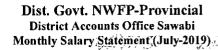
Acosembne General, Kanober Pakhtundha, Penjanga

Secretaries to Government of Punjab, Security Saporteran intravoc Department

All Autor product Seem Autonomous Socies in Region Pakit Leikhale

(INTIAZ AYUB) Adálliadai Seranjan (Reg

ATTESTAD





Personal Information of Mr MUHAMMAD HASSAN KHAN d/w/s of HUSSAIN KHAN

Personnel Number: 00231009

CNIC: 1620208367127

NTN: 4187998-8

Date of Birth: 06.04.1964

Entry into Govt. Service: 05.12.1989

Length of Service: 29 Years 07 Months 028 Days

Employment Category: Active Temporary

Designation: SENIOR PHYSICAL EDUCATION

DDO Code: SU6086-Principal GHS Gandaf Swabi

Payroll Section: 003

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

473,110.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 16 Pay Stage: 17

	Wage type	Amount	Wage type	Amount
0001	Basic Pay	44,750.00	1000 House Rent Allowance	2,727.00
1924	UAA-OTHER 20%(16 G/NG)	1,500.00	1947 Medical Allow 15% (16-22)	1,845.00
2148	15% Adhoc Relief All-2013	1,020.00	2199 Adhoc Relief Allow @10%	685.00
2211	Adhoc Relief All 2016 10%	3,508.00	2224 Adhoc Relief All 2017 10%	4,475.00
2247	Adhoc Relief All 2018 10%	4,475.00	2264 Adhoc Relief All 2019 10%	4,475.00

Deductions - General

-	Wage type	Amount		Wage type	Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-973.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-1,089.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
6505	GPF Loan Principal Instal	150,000.00	-10,000.00	50,000.00

Deductions - Income Tax-

Payable:

11,675.95

Recovered till July-2019:

973.00

Exempted: 0.05-

Recoverable:

10,703.00

Gross Pay (Rs.):

69,460.00

Deductions: (Rs.):

-16,352.00

Net Pay: (Rs.):

53,108.00

Payee Name: MUHAMMAD HASSAN KHAN

Account Number: 618-1

Bank Details: NATIONAL BANK OF PAKISTAN, 231740 NBP GADOON AMAZAI IND: STAT GADOON AMAZAI IND:

STAT, GADOON

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: VILL AND PO GANDAF SWABI

City: SWABI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

(232428/28.07.2019/22:36:13) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

Dist. Govt. NWFP-Provincial District Accounts Office Sawabi Monthly Salary Statement (September-2019)



Personal Information of Mr MUHAMMAD HASSAN KHAN d/w/s of HUSSAIN KHAN

Personnel Number: 00231009

CNIC: 1620208367127

NTN: 4187998-8

Date of Birth: 06.04.1964

Entry into Govt. Service: 05.12.1989

Length of Service: 29 Years 09 Months 027 Days

Employment Category: Active Temporary

Designation: SENIOR PHYSICAL EDUCATION

80004594-DISTRICT GOVERNMENT KHYBE

DDO Code: SU6086-Principal GHS Gandaf Swabi Payroll Section: 003

GPF Section: 001 Interest Applied: Yes Cash Center:

GPF Balance:

557,161.00

GPF A/C No:

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil **BPS: 16**

Pay Stage: 17

·		Wage type	Amount
Wage type	Amount		2,727.00
	44,750.00	1000 House Rent Allowance	1,500.00
0001 Basic Pay	5,000.00	1924 UAA-OTHER 20%(16 G/NG)	
1210 Convey Allowance 2003		2148 15% Adhoc Relief All-2013	1,020.00
1947 Medical Allow 15% (16-22)	1.845.00	2148 13707tanco resultante 10%	3,508.00
2199 Adhoc Relief Allow @10%	685.00	2211 Adhoc Relief All 2016 10%	4,475.00
	4,475.00	2247 Adhoc Relief All 2018 10%	
2224 Adhoc Relief All 2017 10%			0.00
2264 Adhoc Relief All 2019 10%	4,475.00	<u></u>	

Deductions - General

Wage type Amount Wage type -3.340,00 3501 Benevolent Fund	
-3,340.00 3501 Benevolent Fund	-800.00
3016 GPF Subscription 1 223 00 3990 Emp.Edu. Fund KPK	-150.00
3609 Income Tax	0.00

Deductions - Loans and Advances

	,	Principal amount	· Deduction	Balance
Loan	<u>Description</u>	150,000.00	-10,000.00	30,000.00
6505	GPF Loan Principal Instal	130,000.00		

Deductions - Income Tax

Payable:

14,175.95

Recovered till September-2019:

3,169.00 Exempted: 0.05-

Recoverable:

11,007.00

Gross Pay (Rs.):

74,460.00

Deductions: (Rs.):

-16,163.00

Net Pay: (Rs.):

58,297.00

Payee Name: MUHAMMAD HASSAN KHAN

Bank Details: NATIONAL BANK OF PAKISTAN, 231740 NBP GADOON AMAZAI IND: STAT GADOON AMAZAI IND:

STAT, GADOON

Leaves:

Opening Balance:

Availed:

Earned:

Balance:

Permanent Address: VILL AND PO GANDAF SWABI

City: SWABI

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

(232428/25.09.2019/21:52:43) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted .

Appel No. 1152/2019. Masked Hayet is Goot.

11.11.2019

Counsel for the appellant present.

Learned counsel referred to the judgiment 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 reinfoursed. 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 discumstances and in order to protect the appallant from a fresh round of libigation which may protract twee a formidable period, the appear in hand it disposed of with of rervation that the judgment of Hanourable Peshawar High Court passed in Writ Petitions Including W.P. No. 3152-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 regard,

ANNOUNCED

11.11.2019

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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 SPE (BPS-16) 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-I 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 conveyance allowance in its judgment dated 11.11.2019 in appeal No 1452/2019 titled Magsad Hayat versus Education Department. 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: 13.08.2020

Your Obediently

MISTED

MUHAMMAD HASSAN KHAN

E-B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

APPEAL NO. 1452 /2019

Service Tribunal

Mr. Maqsad 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 UDNER 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: 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

24/10/19 PM Appeal No. 1452/2019 Markad Hayat vs Gost 22

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.

Peshawag

Cardfier

ANNOUNCED

11.11.2019

EV & 11.43 Se al. Chairman

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TIBUNAL, PESHAWAR

, A		OF 2020
		(APPELLANT)
MUHAMMAD HASSAN KHAN	<u>-</u>	(PLAINTIFF)
		(PETITIONER)
	<u>VERSUS</u>	
		(RESPONDENT)
Education Department		(DEFENDANT)
I/We MUHAMMAD HASSAN K appoint and constitute MUNFAT plead, act, compromise, withdraw Counsel/Advocate in the above n and with the authority to engage cost. I/we authorize the said Advobehalf all sums and amounts payanoted matter.	ALI YOUSAFZAI, wo or refer to an acted matter, with appoint any other cate to deposit, we have a second content of the content	rbitration for me/us as my/our hout any liability for his default er Advocate Counsel on my/our withdraw and receive on my/our
Dated/2020		
		CLIENT
		ACCEPTED
	3	MUNFAT ALI YOUSAFZAI

ADVOCATE