FORM OF ORDER SHEET

Form- A

Court of

5978 12020 Case No.-

S.No.	Date of order	Order or other proceedings with signature of judge
	proceedings	
1	2	3.
1-	14/12/2020	The appeal presented today by Mr. Kamran Khan Advocate may
-		be entered in the Institution Register and put to the Learned Member for proper order please.
		REGISTRAR
2-	08-02-21	This case is entrusted to S. Bench for preliminary hearing to be put
	v) 	up there on03 - 03 - 21
	y	
		MEMBER(J)

The learned Member Judicial Mr. Muhammad Jamal Khan is 03.03.2021 under transfer, therefore, the case is adjourned. To come up for the same before S.B on 28.07.2021.



## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

## APPEAL NO. \_\_\_\_/2020

VS

KARIMULLAH SHAH

**EDUCATION DEPTT:** 

INDEX					
S.NO.	DOCUMENTS	ANNEXURE	PAGE		
1.	Memo of appeal		1- 3.		
2.	Notification	A	4.		
3.	Pay slips	B & C	5-6.		
4.	Departmental appeal	D	7.		
5. ·	Service Tribunal judgment	E	8-9.		
6.	Vakalat nama		10.		

#### APPELLANT

THROUGH:

KAMRAN KHAN ADVOCATE

OFFICE: Flat No.4, 2<sup>nd</sup> Floor, Juma Khan Plaza, Near FATA Secretariat, Warsak Road, Peshawar. 0344-9118844

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

APPEAL NO. 5378/2020

Mr. Karimullah Shah, SDM (BPS-16), GHS Kulalai, District Shangla.

164/62

Khyber Pakhtukhwa

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.

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 previ Registrations of the appellant.

### <u>R/SHEWETH:</u> <u>ON FACTS:</u>

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SDM (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 conveyance allowance for employees

- 4- That some of colleagues of the appellant approached to this august Tribunal in different service appeals which was allowed by this august Tribunal vide its judgment dated 11.11.2019. Copy of the judgment is attached as annexure.....**D**.

#### **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 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 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.

APPELLANT

essimillal Shak

THROUGH:

KAMRAN KHAN AÓVOCATES

# BETTER COPY PAGE- 4

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

## NO.FD/SO(SR-II)/52/2012 Dated Peshawar the: 20.12:2012

#### From

.To:

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

#### 1.

- All administrative Secretaries to Govt: of Khyber Pakhtunkhwa. The Senior Member, Board of Revenue; Khyber Pakhtunkhwa. ·2.
- The Secretary to Governor, Khyber Pakhunkhwa 3.
- 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 Govt of Khyber Pakhtunkhwa (working in BPS-1 to BPS-15) w.e.f from 1" September, 2012 at the following: rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain un-

S.No. BPS	Fried D
1. 1.4	Existing Rate (PM) Revised Rate (PM)
2. 5-10	Rs. 1,700/-
3 111	Rs. 1,500/- Rs. 1,840/-
4 16 10	Rs. 2,000/
4 16-19	Rs. 5,000/-

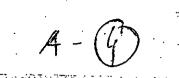
2. Conveyance Allowance at the above rates per month shall be admissible to those BPS-17 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)

Secretary Finance

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



## OVERNMENT OF KHYBER PARTUNKHWA FINANCE DEPARTMENT REGULATION WITH G

NO. FOISCISR: Hv7-52/2212 Dated Reshauscher 20-12-2312

The Societary to leave of Asycon Pathale an Finance Destinated. zahavear.

A funitation of Service in Governments The Serier Liemeer Board of Reverse. Phylographic freezes The Secretary to Concrete type Pauluatents Tre Secretary In Chail Minkey: Konter Fundamenta Tre Secretary Frances avoned from terralamentary

AT District Coordination Officered States Scilling

As Policial Aserits, District & Semicas I. 7355 manufacer Publicationer The Repart Pestimer Hall Cathering against

The Chairman, Rublic Genice Centre Sebar shyber Pokhtunitaus. The Chairman, Rencord Tribunal Kayos (FS) munitima.

REVISION IN THE PATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PARHTUNKHWA PROVINCIAL SOVERNMENT BPS 1-10

The Governmer of Yhyter Pathas and has been reasoned entener White the rate of Conveyance Allowance admissible to all the province Ovil Sections (Gove White Pathanetwa (months & PPS (1992) Well from it Sectember 1012 at Te islowing rates. However, the conversion allowance for employees in SPSATS to SPSATS

्रिसी हिंदे लोग होता. <u>erkhanige</u>e

From

To:

Street.

Door Sig.

S.NO	BPS	्रहराजनः	NGRATE	(PH)/~	EVISEDR	ATE (PH)
1 1			<u>1002 - 1</u>	د میں دور میں اور	<u> </u>	00/
· · · · · ·	-10	Contrary of the	51 EQ0/-		RS 1 8	40/-
<u> </u>	11-15		\$2.600			Z0/-
<u> </u>	15 19		5,500	<u> </u>	······································	XOC

Comeyance Allowance of the approvisition of month shall be acreable those SPS-17, 18 and 19 clisters who have not been sandtoned clitical vehicles.

Yours Fainfully

Sahiozada Saood Ah Secielary Fazarea 

Findsit NO. FDISO(SR. IL SET22012 ilecember: Un

A Copy is lonvarded for information is the

כיטיידבחו (הבול אמיירבי רטווונבי ליהב אייר אייניבינים) אמיירבי Severates (a Generative of Public), and the Saturation Finalizer Denter Aux-upper provide Sector in Sinder Falsturing in Aux-upper provide Sector in Sinder Falsturing in

INTEZ

#### Dist. Govt. NWFP-Provincial District Accounts Office Shangla Monthly Salary Statement (November-2019)

0	
$\left( \begin{array}{c} \\ \end{array} \right)$	N. Le

#### Personal Information of Mr KARIMULLAH SHAH d/w/s of RAFIULLAH

Personnel Number: 00205565 Date of Birth: 02.02.1970 CNIC: 1550584625835 Entry into Govt. Service: 26.09.1988

## NTN: Y

Length of Service: 31 Years 02 Months 006 Days

**Employment Category: Active Permanent** 

Designation: SENIOR DRAWING MASTERDDO Code: SH6126-HM G.H.S Kulalai PuranPayroll Section: 001GPF Section: 001GPF A/C No: EDUSW009424Interest Applied: YesVendor Number: -Pay and Allowances:Pay and Allowances:Pay scale: BPS For - 2017

80475896-DISTRICT GOVERNMENT KHYBE

Cash Center: GPF Balance:

593,948.00

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	
1210	Convey Allowance 2005	5,000.00	1912 Compen Allow 20% (16-N1)	1,500.00	
1947	Medical Allow 15% (16-22)	1,766.00	2148 15% Adhoc Relief All-2013	980.00	
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		0.00	

#### **Deductions - General**

	Wage type	Amount	Wage type	Amount
<u>3016</u>	GPF Subscription	-3,340.00	3501 Benevolent Fund	-800.00
3609	Income Tax	-1,217.00	3990 Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	 -650.00	·	0.00

#### **Deductions - Loans and Advances**

Loan	<u> </u>	Descr	iption .	Principal amo	unt Deductio	n Bala	nce
6505	GPF Loar	n Principal Insta	<u> </u>	500,000.00	-13,889.00	222,22	0.00
Deduction Payable: Gross Pay	ns - Incom 14,354 y (Rs.):		ed till November-2019: Deductions: (Rs.):	5,836.00 Exem	npted: 0.03R Net Pay: (Rs.):	ecoverable: 8,5 54,295.00	18.58
Account ]	Number: 41 ails: NATI	MULLAH SHAI 157485519 Onal Bank C	H DF PAKISTÀN, 232245 P	URAN DISTRICT	SHANGLA PURAN [	DISTRICT SHANG	LA,

Leonard Origina D. I.

Leaves: Opening Balance: Availed: 

Earned: Balance:

Permanent Address: VI	LL & PO'CHC	WGA DISTTSHANG	JLA.				
City: SHANGLA Temp. Address:	-	Domicile: NW - K	hyber Pakhtur	nkhwa ,	Housing State	is: No Official	
City:		Email:				·	
-	•					-	. ·

(204686/10.12.2019/14:54:49) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

----

#### Dist. Govt. NWFP-Provincial District Accounts Office Shangla Monthly Salary Statement (September-2018)



#### Perso

Personnel Number: 00205565		(
Date of Birth: 02.02.1970	÷	J

5 CNIC: 1550584625835 Entry into Govt. Service: 26.09.1988

Length of Service: 30 Years 00 Months 006 Days

NTN:

#### Employment Category: Vocational Temporary

Designation: SENIOR DRAWIN	G MASTER	80004433-DISTRICT G0	OVERNMEN	Т КНҮВЕ	
DDO Code: SH6095-HEAD MA	STER GHS MACH KANDAI	SHANGLA			
Payroll Section: 001	GPF Section: 001	Cash Center:			
GPF A/C No: EDUSW009424	Interest Applied: Yes	<b>GPF Balance:</b>		300,908.00	
Vendor Number: - Pay and Allowances:	Pay scale: BPS For - 2017	Pay Scale Type: Civil	BPS: 16	Pay Stage: 16	

Wage type		Wage type Amount		Wage type	Amount
0001	Basic Pay	43,230.00	1000	House Rent Allowance	2,727.00
1912	Compen Allow 20% (16-N1)	1,500.00	1947	Medical Allow 15% (16-22)	1,766.00
2148	15% Adhoc Relief All-2013	980.00	2199	Adhoc Relief Allow @10%	685.00
2211	Adhoc Relief All 2016 10%	3,508.00	2224	Adhoc Relief All 2017 10%	4,323.00
2247	Adhoc Relief All 2018 10%	4,323.00			0.00

#### **Deductions - General**

	Wage type	Amount		Wage type	Amount
3016	GPF Subscription - Rs3340	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-50.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-1,089.00			0.00

#### **Deductions - Loans and Advances**

Loan		Descri	ption	Principal amount	Deduction	Balance
6505 ·	GPF Loan P	rincipal Instal	×	500,000.00	-13,889.00	416,666.00
<b>Deduction</b> Payable:	s - Income T 1,000.00		ed till September-2018:	150.00 Exempted	400.00 Recovera	ble: 450.00
Gross Pay	(Rs.): 6	<b>i3,042</b> .00	Deductions: (Rs.):	-19,318.00	Net Pay: (Rs.): 43,	724.00
		<b>TX X</b> 1 X X (1 X / 1 X	r	-		
Account N Bank Deta	ils: MCB BA	00000001919-		H SHANGLA MCB AL	LOCH SHANGLA, SHA Balance:	NGLA
Account N Bank Deta Leaves:	Iumber: PLS ils: MCB BA Openin t Address: VI NGLA	0000001919- NK LIMITEI g Balance:	1 D, 240968 MCB ALLOCI	Earned:		

System generated document in accordance with APPM 4.6.12.9 (SERVICES/27.09.2018/16:19:36/v1.1) \* All amounts are in Pak Rupees \* Errors & omissions excented

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

PESHAWAR

APPEAL NO. 1452 /2019

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

#### VERSUS

- 1- The Government of Knyber 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 DURING WINTER & SUMMER OF THE APPELLANT 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 Fledto-day previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in Registrar favor of the appellant. -4/10/19

**R/SHEWETH:** ATTESTON FACTS:

ER

Ce Tribunal eshaw af

1-That the appellant is serving in the elementary and secondary education department as Certified Teacher (BPS-15) quite efficiency Pakinghing 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

Appeal No. 1452/2019 Markad Hayat vs Govt

11.11.2019

rtified(t) he ture copy

Peshawar

Tribucali

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 fissue 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.

Chairm

ANNÒUNĊED 11.11.2019

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 SDM (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 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 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: 27.08.2020

Your Obediently KARIMULTAH SHAH, SDM GHS Kulalai, Shangla

Τo,

### VAKALATNAMA

### **BEFORE THE KHYBER PAKHTUNKHWA SERVICE TIBUNAL,** PESHAWAR

OF 2020

Karimullah Shah

(APPELLANT) \_(PLAINTIFF) (PETITIONER)

#### VERSUS

Education Department

(RESPONDENT) (DEFENDANT)

I/We Karimullah Shah

Do hereby appoint and constitute KAMRAN KHAN, 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

annuller cohn

KAMRAN KHAN **ADVOCATES** 

**OFFICE:** 

Flat No.4, 2<sup>nd</sup> Floor, Juma Khan Plaza, Near FATA Secretariat, Warsak Road, Peshawar. Mobile No.0344-9118844