# FORM OF ORDER SHEET

Form- A

/2020

Court of\_\_\_\_\_

Case No.-

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
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.
2-	08-02-21	This case is entrusted to S. Bench for preliminary hearing to be put up there on $03 - 03 - 21$

03.03.2021 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.

Reader

**q**/ MEMBER(J)

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

# SHAMSUL ISLAM

# VS

### **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. <u>777</u>/2020

Mr. Shamsul Islam, SPET (BPS-16), GHS Kulalai Puran, District Shangla.

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 SUMMER THE APPELLANT DURING WINTER & OF 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 ously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

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

- 1- That the appellant is serving in the Elementary & Secondary Education Department as SPET (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**.
- 5- That appellant also filed Departmental appeal before the appellate for redressal of his grievances in light of the principle of consistency but no reply has been received from the quarter concerned. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure.

### **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 O Islam

THROUGH:

ADVOCATES

# 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.

### All administrative Secretaries to Govt: of Khyber Pakhtunkhwa. ·2.

- The Senior Member, Board of Revenue, Khyber Pakhtunkhwa
- 3. The Secretary to Governor, Khyber Pakhunkhwa
- 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. Ali 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: <u>REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE</u> CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS-1-19

### Dear Sir,

The Government of Khyber Pakhunkhwa 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<sup>st</sup> September, 2012 at the following: rates. However, the conveyance allowance for employees in BPS-16 to BPS-19 will remain un-

			· · ·
S.No.	BPS	Existing Rate (PM)	Porror d P
1.	14	Rs. 1.500/-	Revised Rate (PM)
2	510		Rs. 1,700/-
<u> </u>	5-10	Rs. 1.500/-	Rs. 1,840/-
<u> </u>	11-15		
4	16-19		Rs: 2,720/-
L	10-19	Rs. 5,000/-	Rs: 5,000/-
•			

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 Anmad) Secretary Finance

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

# GOVERNMENT OF KHYBER PARHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

NC FEISCISR-III73-5212012 Dated Perhavaritie, 20-12-2012

The Secretary to Gover of Knysen Pazhaunanya Finance Ceparanea Penhawar

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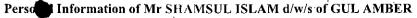
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#### **Dist. Govt. NWFP-Provincial District Accounts Office Shangla** Monthly Salary Statement (September-2018)



Personnel Number: 00353304 Date of Birth: 20.04.1976

·CNIC: 11394078888 Entry into Govt. Service: 15.11.1997



Length of Service: 20 Years 10 Months 017 Days

#### **Employment Category: Active Permanent**

Designation: SENIOR PHY	SICAL EDUCATION	80004440-DISTRICT GC	VERNMEN	ТКНҮВЕ
DDO Code: SH6113-		. 1		
Payroll Section: 001	GPF Section: 001 -	Cash Center:		
GPF A/C No:	Interest Applied: Yes	GPF Balance:		425,447.00
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
1912	Compen Allow 20% (16-N1)	1,500.00	1947	Medical Allow 15% (16-22)	1,844.00
2148	15% Adhoc Relief All-2013	1,060.00	2199	Adhoc Relief Allow @10%	711.00
2211	Adhoc Relief All 2016 10%	3,636.00	2224	Adhoc Relief All 2017 10%	4,475.00
2247	Adhoc Relief All 2018 10%	4,475.00			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	-84.00	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
<b>Deductions</b>	- Income Tax				
Payable:	1,000.00 Recovered	ed till September-2018:	252.00 Exempted	: 0.80- Recovera	able: 748.80
Gross Pay (I	Rs.): 65,178.00	Deductions: (Rs.):	-5,463.00	Net Pay: (Rs.): 59	,715.00
Account Nu	e: SHAMSUL ISLAM unber: 4144692337	t t	•		
Bank Detail SHANGLA	ls: NATIONAL BANK O	F PAKISTAN, 232245 P	URAN DISTRICT SHA	NGLA PURAN DISTR	ICT SHANGLA,
Leaves:	Opening Balance:	Availed:	Earned:	Balance:	
Permanent A	Address				
City: SHAN		Domicile: NW - Kh	vber Pakhtunkhwa	Housing Statu	s: No Official
Temp. Addı					
City:	· · ·	Email: spetkadona@	)gmail.com	· .	
				· .	
	. ,				
	-				

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



Length of Service: 22 Years 00 Months 017 Days

#### onal Information of Mr SHAMSUL ISLAM d/w/s of GUL AMBER

Personnel Number: 00353304	CNIC: 11394078888	
Date of Birth: 20.04.1976	Entry into Govt. Service:	15.11.1997

**Employment Category: Active Permanent** 

Designation: SENIOR PHYCIAL EDUCATION

DDO Code: SH6126-HM G.H.S Kulalai Puran

80475896-DISTRICT GOVERNMENT KHYBE

NTN:

Payroll Section: 001 .\* GPF Section: 001 Cash Center: GPF A/C No: Interest Applied: Yes **GPF Balance:** 534,936.00 Vendor Number: -Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 16 Pay Stage: 18

	Wage type	Amount	Wage type	Amount
0001	Basic Pay	46,270.00	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)	1,844.00	2148 15% Adhoc Relief All-2013	1,060.00
2199	Adhoc Relief Allow @10%	711.00	2211 Adhoc Relief All 2016 10%	3,636.00
2224	Adhoc Relief All 2017 10%	4,627.00	2247 Adhoc Relief All 2018 10%	4,627.00
2264	Adhoc Relief All 2019 10%	4,627.00	,	0.00

#### **Deductions - General**

Wage type		Amount		Wage type	Amount
3016	GPF Subscription	-3,340.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,095.00	3990	Emp.Edu. Fund KPK	-150.00
4004	R. Benefits & Death Comp:	-650.00			0.00

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

Loan		Descr	iption	Principal a	nount De	duction	Balance
<b>Deductions</b> Payable:	- Income Ta 15,977.26		ed till November-2019:	4,318.00 Ex	empted: 3994.26	Recoverab	ble: 7,665.00
Gross Pay (	Rs.): 76	5,629.00	Deductions: (Rs.):	-6,035.00	Net Pay: (	(Rs.): 70,5	94.00

Payee Name: SHAMSUL ISLAM

Account Number: 4144692337 Bank Details: NATIONAL BANK OF PAKISTAN, 232245 PURAN DISTRICT SHANGLA PURAN DISTRICT SHANGLA, SHANGLA

Leaves:	Opening Balance:	Availed:	Earned:	Balance:	•
Permanent Address: City: SHANGLA		Domicile: NW - Khyber Pakhtunkhwa		Housing Status: No Official	
Temp. Add	lress:				
City:		Email:			

*ب*الام SPET PU كوريس باني كول كولال

03454563316 / 03

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRU PESHAWAR

# APPEAL NO. 1452 /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 ACTION OF THE RESPONDENTS BY ILLEGALLY AND UNLAWFULLY DEDUCTING THE CONVEYANCE ALLOWANCE THE APPELLANT DURING WINTER & SUMMER OF 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, 24/10/19

**R/SHEWETH:** ALTESTON FACTS:

EXER.

Ice TribanaL

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

. Counsel for the appellant present.

11.11.2019

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Kruakhwa

vice Aribunal.

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.

Chairm

File be consigned to the record.

ANNOUNCED

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 SPET (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 SHAMSUL ISLAM, SPET GHS Kulalai Puran, Shangla

To,

## VAKALATNAMA

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TIBUNAL, PESHAWAR

\_\_\_\_\_ OF 2020

Shamsul Islam

(APPELLANT) \_\_(PLAINTIFF) (PETITIONER)

## **VERSUS**

Education Department

\_\_\_\_(DEFENDANT)

(RESPONDENT)

I/We Shamsul Islam

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

and Man

CLIENT

ACCEPTED 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