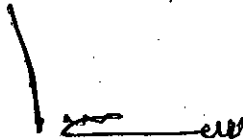


Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 7099 /2021

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 27/07/2021 | <p data-bbox="544 655 1461 806">The appeal resubmitted today by Mr. Khan Zada Khan Advocate may be entered in the Institution Register and put to the Worthy Chairman for proper order please.</p> <p data-bbox="1161 756 1404 919"> REGISTRAR</p> <p data-bbox="544 932 1461 1020">This case is entrusted to S. Bench for preliminary hearing to be put up there on _____</p> <p data-bbox="1144 1159 1323 1197">CHAIRMAN</p> |

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2021

Jamal Abdu NasirAppellant
VERSUS

D.E.O, Dir Lower at Timargara and others.....Respondents

INDEX

| S.No | Description of Documents | Annex | Pages |
|------|---------------------------------------------------------------------------------|-------|-------|
| 1. | Service appeal alongwith affidavit | | |
| 2. | Copy of Notification dated 20.12.2012 | A | 7 |
| 3. | Copies of salary slips of working/ serving month & vacations (deduction period) | B-C | 8-9 |
| 4. | Copy of departmental appeal | D | 10 |
| 5. | Copies judgment/ order dated 15.10.2020 | E | 11 |
| 6. | Wakalat Nama | | |

Through Appellant



Date: 22/04/2021

Khan Zada Khan
Advocate High Court
Cell: 0300-9175182

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Khyber Pakhtukhwa
Service Tribunal

Service Appeal No. 7099 /2021

Diary No. 5812

Dated 27/5/2021

Jamal Abdu nasri primary school teacher
BPS - 12, G.P.S Banda payeen. Dir (L)

C/o District Education Officer (Male/ Female),
Dir Lower at Timargara

.....Appellant

V E R S U S

1. The District Education Officer (Male),
District Dir Lower at Timargara
2. The District Education Officer (Female),
District Dir Lower at Timargara
3. The District Accounts Officer (Male),
District Dir Lower at Timargara.
4. The Director,
Elementary & Secondary Education, KPK,
G.T.Road, Peshawar
5. The Secretary,
Elementary & Secondary Education, KPK,
Civil Secretariat, Peshawar.
6. The Secretary Finance,
Finance Department, Civil Secretariat, Peshawar.
7. The Accountant General, KPK,
The-Mall, Peshawar Cantt
8. The Government of KPK
Through Chief Secretary,
Civil Secretariat, Peshawar.....

.....Respondents

Filed to-day

Registrar

27/5/2021

Re-submitted to-day
and filed.

Registrar

27/5/21

Service appeal u/s 4 of the Service Tribunal Act, 1974 against the impugned action of the respondents by illegally and unlawfully deducting the conveyance allowance of the appellant during winter and summer vacations and against no action taken on the departmental dated 30.10.2020 appeal of the appellant within the statutory period of ninety days.

Prayer in Appeal:

On acceptance of the instant service appeal, the respondents may kindly be directed not to make deduction of conveyance allowance during vacations period (summer and winter vacations) and make the payment of out 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 favour of the appellant.

Respectfully Sheweth:

The appellant humbly submit states:

1. That the appellant is performing his duties in Education Department under the supervision and administrative control of respondent No. 1.

2. That the Conveyance Allowance is admissible to all the Civil Servants and to this effect 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 enhanced/ revised while employees from BPS-16 to 19 have been treated under the previous notification by no enhancing their conveyance allowance. (Copy of Notification dated 20.12.2012 is 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 leave period. (Copies of the salary slips of working/ serving month and vacations (deduction period) are attached as Annexure "B" & "C").
4. That the appellant feeling aggrieved from the action of the respondents regarding deduction of conveyance allowance in vacations period/ months filed departmental appeal but no reply has been received so far. (Copy of departmental appeal is Annexure "D").
5. That the appellant being aggrieved with the aforesaid impugned action/inactions of respondents, approached this Hon'ble Tribunal, with the following amongst other grounds:

GRUNDS:

- A. The appellant has come to this Hon'ble Tribunal with clean hands.
- B. That the appellant has not been treated by the respondents 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 of Pakistan 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 of the Government Servant Revised Leave Rules, 1981 while the vacations are always announced by the Government, therefore, under the law and Rules the appellant is fully entitled for the grant of conveyance allowance during vacations period.
- E. That the Government Servants Revised Leave Rules, 1981 clearly explains that, the civil servants who avail the vacations are allowed only one leave in a month whereas the other civil servants may avail 4 days leave in a calendar months and the same are credited to leave account of the appellant and in this way the appellant 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 12 days in a year and earned leave for 12 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 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.
- H. 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 entitled for the grant of conveyance allowance during vacations.
- I. That this Hon'ble Tribunal recently in so many other similar nature appeals has granted the same relief as

prayed for by the appellant. (Copies judgment/ order dated 15.10.2020 is Annexure "E").

- J. Any other ground will be raised at the time of arguments, with kind permission of this Honourable Tribunal.

It is, therefore, most humbly prayed that keeping in view the facts and circumstances of the instant appeal, relief as prayed for may kindly be granted in favour of the appellant.

Any other remedy which deems fit by this Honourable Tribunal may also be granted in favour of appellant.


Appellant
Through



Khan Zada Khan
Advocate High Court

Date: 22/04/2021

AFFIDAVIT

It is stated on oath that the contents of **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
 (REGULATION WING)

NO. FD/ISO(SR-IT)S-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 Government 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 in Khyber Pakhtunkhwa.
- 8. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
- 9. The Registrar, Peshawar High Court, Peshawar.
- 10. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
- 11. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject:

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

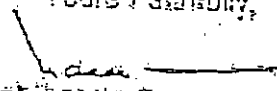
Dear Sir,

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 (PK) | REVISED RATE (PK) |
|------|-------|--------------------|-------------------|
| 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 vehicles.

Yours Faithfully,

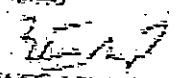

 (Sahibzada Saad Ahmad)
 Secretary Finance

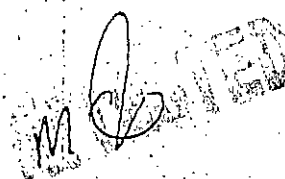
Encl: NO. FD/ISO(SR-IT)S-52/2012

Dated Peshawar the 20th December, 2012

A Copy is forwarded for information to the:-

- 1. Accountant General, Khyber Pakhtunkhwa, Peshawar
- 2. Secretaries to Government of Punjab, Sindh & Balochistan Finance Department
- 3. All Autonomous / Semi Autonomous Bodies in Khyber Pakhtunkhwa


 (IMTIAZ AYUBI)
 Additional Secretary (Reg.)



BETTER COPY PAGE- A

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/- |
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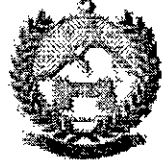
Your Faithfully

(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 (July-2020)

B 8
A



Personal Information of Mr JAMAL ABDUL NASAR d/w/s of RAHMAT WALI

Personnel Number: 00822493 CNIC: 1530686018639 NTN:
Date of Birth: 07.05.1979 Entry into Govt. Service: 04.06.2016 Length of Service: 04 Years 01 Months 029 Days

Employment Category: Active Temporary

Designation: PRIMARY SCHOOL TEACHER 80674791-DISTRICT GOVERNMENT KHYBE

DDO Code: DA6319-District Dir Lower

Payroll Section: 001

GPF Section: 001

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

17,760.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS For - 2017

Pay Scale Type: Civil BPS: 12

Pay Stage: 3

| Wage type | | Amount | Wage type | | Amount |
|-----------|---------------------------|-----------|-----------|---------------------------|----------|
| 0001 | Basic Pay | 16,200.00 | 1000 | House Rent Allowance | 1,961.00 |
| 1300 | Medical Allowance | 1,500.00 | 1923 | UAA-OTHER 20%(1-15) | 1,000.00 |
| 2148 | 15% Adhoc Relief All-2013 | 350.00 | 2199 | Adhoc Relief Allow @10% | 226.00 |
| 2211 | Adhoc Relief All 2016 10% | 1,114.00 | 2224 | Adhoc Relief All 2017 10% | 1,620.00 |
| 2247 | Adhoc Relief All 2018 10% | 1,620.00 | 2264 | Adhoc Relief All 2019 10% | 1,620.00 |

Deductions - General

| Wage type | | Amount | Wage type | | Amount |
|-----------|-------------------|-----------|-----------|---------------------------|---------|
| 3012 | GPF Subscription | -2,220.00 | 3501 | Benevolent Fund | -600.00 |
| 3990 | Emp.Edu. Fund KPK | -125.00 | 4004 | R. Benefits & Death Comp: | -600.00 |

Deductions - Loans and Advances

| Loan | Description | Principal amount | Deduction | Balance |
|------|-------------|------------------|-----------|---------|
|------|-------------|------------------|-----------|---------|

Deductions - Income Tax

Payable: 0.00 Recovered till JUL-2020: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 27,211.00 Deductions: (Rs.): -3,545.00 Net Pay: (Rs.): 23,666.00

Payee Name: JAMAL ABDUL NASAR

Account Number: 1003806

Bank Details: MCB BANK LIMITED, 241263 MCB BALAMBATTIMARGARA MCB BALAMBAT TIMARGARA,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: BANDA PAYEEN

Domicile: -

Housing Status: No Official

Temp. Address:

City:

Email: jamalmkd2016@gmail.com

ATTESTED

To

The Director,
Elementary & Secondary Education (E&SE),
Khyber Pakhtunkhwa,
Peshawar.

Subject: **APPEAL FOR RESTORATION OF CONVEYANCE ALLOWANCE**

Respected Sir,

1. That the appellant is an employee of Education Department (Teaching Cadre) and is performing his/her duty under the control and supervision of District Education Officer, Dir Lower at Timargara.
2. That vide Notification dated 20.12.2020, conveyance allowance already granted, admissible and received by the appellant, has now been deducted from the monthly salary of the appellant during summer/winter vacations.
3. That in light of the judgments passed by the Honourable Federal Service Tribunal, Islamabad in Appeal No.1888 dated 03.12.2018, Peshawar High Court, Peshawar in writ petition No.1362-P of 2019 alongwith 16 other connected writ petitions and judgment passed by the Hon'ble KPK Service Tribunal dated 14.10.2020 alongwith a number of other services appeals, the appellant is also entitled to the same treatment i.e. restoration of conveyance allowance alongwith arrears.

IT IS, THEREFORE, most humbly requested that the conveyance allowance of the appellant may kindly be restored, not be deducted from his monthly salary in future and arrears of already deducted conveyance allowance with effect from the issuance of the impugned notification dated 20.12.2020 be granted to the appellant as well.


Appellant

Date: 30/12/2020

ATTESTED

15.10.2020

Counsel for 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 Hon'ble 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 Hon'ble 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 Hon'ble 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 Hon'ble Peshawar High Court passed in Writ Petitions including W.P No. 3162-P/2019 shall be honored and implemented by the respondent 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 room.

Atiq-Ur-Rehman Wazir
Member (E)

ANNOUNCED
15.10.2020

ATTESTED

بعدالت

سروس ٹریڈنگ، خیبر پختونخوا

بیلانٹ
کیس

2021ء منجانب

عالم ٹریڈنگ پرائیویٹ لمیٹڈ
بنام

مورخہ 12/2/21

مقدمہ

دعویٰ سروس ٹریڈنگ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے دست بردار ہو گیا ہے۔

آن مقام پشاور گورنمنٹ کیلئے خانہ ارحہ خان کی طرف سے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

12/2/21ء

ماہ فروری

12

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

مقام سروس ٹریڈنگ پشاور

سید محمد علی