


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 9048 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	14/07/2021	<p>The appeal presented today by Mr. Najeebullah Advocate may be entered in the Institution Register and put to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on _____.</p> <p style="text-align: right;">CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No..... /2021

Mian Muhammad

VS

Govt-of KP through Secretary E & SE) & others

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Appellant

Through

M. Ashfaq Khan Akhunkhail

Syed Zeshan Khan

&


Mujeebullah

Advocates

Khalid & Law Associates

46-C, 2nd Floor, Cantonment Plaza,
Peshawar Saddar

Cell No. 0333-8522332

Ashfaqkhan182@gmail.com

Dated:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWARService Appeal No. 7048...../2021Khyber Pakhtunkhwa
Service Tribunal

Mian Muhammad

Diary No. 7254Presently serving as PSHT (BPS-15) in GPS SHATAI.NO 1 Dir Lowered 14/7/2021

(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 Khyber Pakhtunkhwa, Peshawar
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar
5. The Director (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 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:**FACTS:**

1. That the Appellant is serving in the Elementary and Secondary Education department as Primary School Teacher (BPS-15) quiet efficiently 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.
3. That later on the finance department enhanced/ revise the rate of conveyance Allowance vide Notification dated 20-12-2012 for civil servants (BPS-1-15) but Respondents have treated the Appellants under the previous notification by not enhancing their conveyance allowance. **Copy of the Notification are attached as annexure A)**
4. 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 the leave period. **(Copies of the Salary slips of working/serving month and vacations deduction period are attached as annexure B&C)**
5. That similar placed employees of Elementary & Secondary Education Department (hereinafter referred as E & S Education Department) approached this August Tribunal and their grievance was redressed vide judgment dated 11-11-2019. **(Copy of Judgment dated 11/11/2019 is attached as annexure D)**
6. That being aggrieved from the illegal action of deduction of conveyance allowance, the Appellant preferred departmental appeal before the competent authority but the same has not been responded by Respondents within the statutory period of ninety days. **(Copy of departmental appeal is annexed as annexure E)**
7. That feeling aggrieved from action and inaction of the Respondents and having no other remedy available, hence, the Appellant approaches this Hon'ble Court inter alia on the following grounds.

Filed to-day

Registrar

14/7/21

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 has 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 guaranteed 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 governed by Government Servant Revised Leave Rules, 1981 while 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 vacation 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 month 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 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 discriminatory hence, not tenable in the eye of law.
- G. That Appellant has vested right of equal treatment before law and the act of the Respondents to deprive the Appellants 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 is fully entitled for the grant of conveyance allowance during vacations.
- J. That the Appellants seeks permission of this Hon'ble Court to raise any other grounds available at the time of arguments.

In wake of above submission, it is, therefore, most humbly prayed 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

Or

Any other remedy which this august Tribunal deems just and proper that may also be awarded in favor of the Appellant.

Through

M. Ashfaq Khan Akhunkhail Syed Zeshan Khan & Mujeebullah
ADVOCATES

Khalid & Law Associates 46-C, 2nd Floor, Cantonment Plaza, Peshawar Saddar

Mic
Appellant

CERTIFICATE

As per instruction of my client prior to the present one, no such like appeal has been filed by the Appellant before this Hon'ble Court.

[Signature]
ADVOCATE

A - ⑧

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATIONS WING)

NO. FDSO/SR/INTD/525/12
Dated: Peshawar, the 26-12-2012

From: The Secretary to Government, Peshawar
Finance Department
Peshawar.

To: The Director, Government of Khyber Pakhtunkhwa
The Senior Member, Board of Revenue, Peshawar
The Secretary, Government of Khyber Pakhtunkhwa
The Secretary, Board of Revenue, Peshawar
The Director, Peshawar
All Heads of Departments, Government of Khyber Pakhtunkhwa
All District Commissioners, Government of Khyber Pakhtunkhwa
The Registrar, Peshawar
The Chairman, Public Service Commission, Peshawar
The Chairman, Board of Revenue, Peshawar

REVISION IN THE RATE OF COMMISSAGE ALLOWANCE FOR THE
CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA PROVINCIAL
GOVERNMENT BPS-17

Dear Sir,
The Government of Khyber Pakhtunkhwa has been requested to increase the rate of commissage allowance for all the provincial civil servants of Government of Khyber Pakhtunkhwa from the existing rates (BPS-17) with effect from 01/01/2013 to the following rates. However, the commissage allowance for employees in BPS-17 (PS-17) shall remain unchanged.

S.NO	BPS	EXISTING RATE (PKR)	REVISED RATE (PKR)
1	1-4	RS. 500/-	RS. 700/-
2	5-10	RS. 700/-	RS. 840/-
3	11-15	RS. 900/-	RS. 1,120/-
4	16-19	RS. 1,000/-	RS. 1,200/-

Commissage Allowance at the above rates for month shall be admissible those BPS-17, 18 and 19 employees who have not been sanctioned official residence.

Yours Faithfully,

Sd/-
Secretary Finance

Encl: NO. FDSO/SR/INTD/525/12

A Copy is forwarded for information of the

To Be True & Correct

Secretary to Government, Peshawar
Finance Department
Peshawar

MA

3/1
BETTER COPY PAGE-5

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/-
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 vehicle.

Your Faithfully

(Sahibzada Saeed Ahmad)
Secretary Finance

ATTESTED

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

Amir D (6)

To

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 SCT (BPS-16) quite efficiently 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 working in 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 granted 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 : 16.08.2020

Yours Sincerely

Muhammad Israr

SCT (BPS 16) in GHS Shehzad No. I Dir Lower.

ATTESTED

Appeal No 1452/2019
Mar Bud Hayat vs Govt

Annex E

(6)

(7)

(8)

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.

filed in the true copy

EXAMINER
Hyderabad
Service Tribunal
Peshawar

File be consigned to the record.

ATTESTED

Chairman

ANNOUNCED

11.11.2019

M

FILED

11.11.2019 Counsel for the Appellant present.

Learned counsel referred to the Judgment passed by learned Federal Service Tribunal an 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 "Ray" 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 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 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.

Chairman

ANNOUNCED
11.11.2019


ATTESTED

بعدالت حیر حسین

غیر محتوخواہ سرویس میونسپل
کے لئے

Appellant

Govt of KP
& Others

2ء منجانب

بنام

حسین محمد

مورخہ

مقدمہ

دعویٰ

جزم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان پر اپنی طرف سے واسطے پیردی اور جواب دہی کا روئی متعلقہ

آن مقام کے لئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب برصوف کو مقدمہ کی کل کارروائی کا کاپل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر حالت ہ فیصلہ برحلف دیئے جواب دی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور دکیل یا مختار قانونی کو اپنے ہمراہ دیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کسی دی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو فریجہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہونے دکیل صاحب پابند ہوں گے۔ کہ پیردی
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 20 جولائی 20

بمقام
کے لئے منظور ہے۔

Accepted
& Accepted Sumner