Form- A

2021

FORM OF ORDER SHEET

Court of Case No.

S.No. Date of order Order or other proceedings with signature of judge proceedings 1 2 3 The appeal presented today by Mr. Umar Farooq Advocate may .j.1-14/06/2021 be entered in the Institution Register and put to the Worthy Chairman for proper order please. REGISTRAR This case is entrusted to S. Bench for preliminary hearing to be put 2up there on 18.06.2021. A a clubbed case with appeal no.12889/2020; CHAIRMAN

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR</u>

APPEAL NO. ____/2021

Abdul Hameed

VS

EDUCATION DEPTT:

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S.NO.	DOCUMENTS	ANNEXURE	PAGE		
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THROUGHT.

UMAR FAROOQ MOHMAND ADVOCATE

APPELLANT

Flat No. 4, 2nd Floor, Jumma Khan Plaza, Warsak Road, Peshawar 0313-8901647

Note:

Sir,

Spare copies will be submitted After submission of the case.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 6161 /2021

Mr. **Abdul Hameed**, SS(BPS-17), GHSS,Nisatta, District Charsadda.

()

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 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 SS(BPS-17) 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 working in BPS 1 to 15 were enhance/revised while employees from

- 4- That some of colleagues of the appellant approached to this august Tribunal in different service appeal 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 preferred departmental appeal before the respondents under the rule of consistency against the unlawful action of deducting the convince allowance, but no response has been given by the respondent department till the expiry of statutory period of ninety days. Copy of the departmental appeal is attached as annexure.....E.
- 6- 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 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 mala fide 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, and 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.

ELLANT

I Hameed

THROUGH

UMAR FAROOO MOHMAND

KAMRAN KHAN

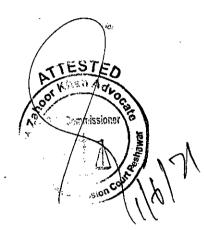
ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

ABDUL HAMEED **EDUCATION DEPTT:& OTHERS** VS

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



A Hand DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

A Hance CERTIFICATION

BETTER COPY PAGE-5

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

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

From

۰ [

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 Pakitunkhwa (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)
11.	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/

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

> (Sahibzada Saeed Ahmad) Secretary Finance

> > TESTED

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

Your Faithfully



GOVERNMENT OF KHYBER PARHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

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

Freitr		
• •	The Secretary to Govit, of Khyber Pakhtunkhwa	
	Finance Department,	
	Penhawar.	•.*
To:		
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	The Senior Member, Bord of Revenue, Whyber Pachtusidwas	٠.
	The Secretary to Geverney Knyber Pakhtlakkawa	· .
	The Secretary to Chint Minoker, Kliyber Pakhlankhwa	•
5.	The Secretary, Francial Astomby Khyber Pakhlurkhan	
Ę	All Heads of Arrached Departments in Knyber Pakhturkhiva	
· · · · ·	Ar Dishim Coordination Officers & Klysen Paichtunkhine.	
·	As Political Agents / District & Semicos Judges in Klutter Pakhtuskhwa	۰.
÷.	The Reg Mile, Reseauxr High Court, Perhapsion	
• •	The Chaleman Peplic Service Conversion, Novber Pokhunitawa,	
	The Chairman, Services, Tribunal Kayoar Fakhlurahwa.	÷.,
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REVISION IN THE RATE OF CONVEYANCE ALLOWANCE FOR THE CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PROVINCIAL GOVERNMENT BPS 1-19

Dear Sh.

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SINO BPS	EXISTING RATE (PM)	REVISED RATE (PM)
<u> </u>	Rs. 1,500/	Rs 1,700/-
5-10	Rs.1,500/-	Rs.1,840/-
3, 11-15	Rs.2,000/	Rs.2,720/-
4 16-19	R5.5,000/-	R\$,5,000/-

Conveyance Allowance at the above rates per month shall be admassible to those 98.5-17, 18 and 10 effects who have not been sanglicited efficial vehicles.

(Sahiozada Sacod Ahmad). Secretary Finance

(INTIAZ AYUB) Additional Solymary (Rom)

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Endse, NO. VD/SO(SR-Up8-52/2012 Dated Pestiawar the 20" Devember, 2012

A Copy is forwarded for information to thet-

Accountant General, Kuyber Pakityar Ind. Pesitawar Secretalias ia Government of Panjab, Sciah & Solarregian, Panaisto Dysettement Mil Autonomous / Semi Autonomous Societ, in Khyper Pakitumbhyla

ATTESTED

Employment Category: Vocational Temporary Designation SUBJECT SPECIALIST 80001067-DISTRICT GOVERNMENT KHYBE DDO Code CAGMAT-PRINCIPAL GOVERNMENT HIGHER SECONDA SCHOOL NISATTA CHARSADDA Payroll Section 001 GPP Section 001 Cash Center GPF AC No Interest Applied Yes GPF Balance: 26,080.00 Vendor Number Pay sole BPS For - 2017 Pay Scale Type Civil BPS 17 Pay Stage 0 Wage type Amount Wage type Amount Wage type 4,433 1041 Medical Allow 15*a (16-22) 1,847 (00 2211 Adhoc Rehef All 2016 10% 2,544 2224 Adhoc Rehef All 2017 10* 3,037 00 2247 Adhos Relief All 2018 10* 3,037 2265 Adhos Relief All 2019 05* 1,518 00 00 00 100 100 100 600 1534 R Ben & Death Comp Fresh -900 00 3990 Emp Edu Fund KPK -254 254 Deductions - Loans and Advances -000 00 3990 Emp Edu Fund KPK -254 -254 Deductions - Loans and Advances -900 00 3990 Emp Edu Fund KPK -256 -254 Deductions - Loans and	Length of Service -00 Years 06 Months 02) Day RICT GOVERNMENT KHYBE DOL NISATTA CHARSADDA Balance: 26,080.00 c Civil BPS 17 Pay Stage 0 Wage type: Amount tent Allowance 4,433-00 Relief All 2016 10% 2,544-00 Relief All 2016 10% 2,544-00 Relief All 2018 10% 3,037-00 0 00 Wage type Amount lent Fund -800-00 Mu Fund KPK -250-180 unt Deduction Balance npted 0.00 Recoverable 0 00 Net Pay: (Rs.): 40,566.00 Peshawar		IMG	-20210409-WA0021.jpg		
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Dist. Govt. KP-Provincial **District Accounts Office Charsadda** Monthly Salary Statement (February-2021)



Personal Information of Mr ABDUL HAMEED d/w/s of MEER KAMAL

Personnel Number: 00905407
Date of Birth: 03.03.1988

CNIC: 1710167338811 Entry into Govt. Service: 12.02.2019

NTN:

Length of Service: 02 Years 00 Months 018 Days

Employment Category: Vocational Temporary

Designation: SUBJECT SPECIALIST 80001067-DISTRICT GOVERNMENT KHYBE DDO Code: CA6047-PRINCIPAL GOVERNMENT HIGHER SECONDA SCHOOL NISATTA CHARSADDA Cash Center: Payroll Section: 001 GPF Section: 001 **GPF Balance:** GPF A/C No: V.33CP.P.78 Interest Applied: Yes 74,375.00 Vendor Number: -Pay scale: BPS For - 2017 Pay Scale Type: Civil Pay Stage: 2 **Pay and Allowances:** BPS: 17

Wage type		Amount	Wage type	Amount
0001	Basic Pay	34,970.00	1000 House Rent Allowance	4,433.00
1210	Convey Allowance 2005	5,000.00	1947 Medical Allow 15% (16-22)	1,847.00
2211	Adhoc Relief All 2016 10%	2,544.00	2224 Adhoc Relief All 2017 10%	3,497.00
2247	Adhoc Relief All 2018 10%	3,497.00	2265 Adhoc Relief All 2019 05%	1,748.00

Deductions - General

Wage type		Amount	-	Wage type	Amount
3017	GPF Subscription	-4,270.00	3501	Benevolent Fund	-800.00
3534	R. Ben & Death Comp Fresh	-900.00	3609	Income Tax	-283.00
3990	Emp.Edu. Fund KPK	-250.00			0.00

Deductions - Loans and Advances

Loan	Descri	ption	Principal amount	Deduction	Balance	
6505	505 GPF Loan Principal Instal		59,000.00	-5,000.00	34,000.00	
Deduction Payable:	ns - Income Tax 3,802.90 Recovere	d till FEB-2021: 1,72	24.00 Exempted:	949.98 Recoveral	ble: 1,128.92	
Gross Pay	(Rs.): 57,536.00	Deductions: (Rs.):	-11,503.00	Net Pay: (Rs.): 46,0)33.00	
Account 1	me: ABDUL HAMEED Number: 001005963309001 ails: ALLIED BANK LIMIT Opening Balance:		di Peshawar City , Pesha Earned:	iwar Balance:		
Permanen	nt Address:					
City: S Do		Domicile: -	Domicile: -		Housing Status: No Official	
Temp. Ad	ldress:					
City: Email: abdulh		Email: abdulhamee9	11@gmail.com			
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System generated document in accordance with APPM 4.6.12.9(SERVICES/01.03.2021/20:25:08/v2.0) * All amounts are in Pak Rupees * Errors & omissions excepted



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 SS(BPS-17) guite 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: 25.02.2021

Your Obediently

Abdul Hameed

ATTESIEU

To,

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNA 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 (#8SE) 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 APPELLANT DURING WINTER & SUMMER OF THE VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

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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 vedte-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.

R/SHEWETH: ON FACTS:

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1- That the appellant is serving in the elementary and essecondary 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

11.11.2019

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or filler

Poshawat

Counsel for the appellant present.

Apleal No 1452-12011 Markad Haijat VS Gov

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 reintbursed. Similar reference was made to the judgment by Honourable Peshawar High Court passed on 01.10.2019 in the case of appellant:

Venus.

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.

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Chairmán

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ATTESTED

File be consigned to the regord AII ESI

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ANNOUNCED

11.11.2019

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TIBUNAL, PESHAWAR

OF 2021

Abdul Hameed

(PLAINTIFF) (APPELLANT) (PETITIONER)

VERSUS

Education Department

(RESPONDENT) (DEFENDANT)

I/We Abdul Hameed ____

Do hereby appoint and constitute **UMAR FAROOQ MOHMAND**, **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.___/2021

CLIENT

UMAR FAROOQ MOHMAND

KAMRAN KHAN ADVOCATES

OFFICE: Flat No. 4, 2nd Floor, Jumma Khan Plaza, Warsak Road, Peshawar 0313-8901674