Form- A

FORM OF ORDER SHEET

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- No -		1 2 1 0 (a)	/2020	σo

	Case No	13180 /2020 20
.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/10/2020	The appeal presented today by Mr. Umar Farooq Advocate
		may be entered in the Institution Register and put to the Learned Member
		for proper order please.
•		REGISTRAR
		This case is entrusted to S. Bench for preliminary hearing to be put
		up there on 1/3/2021
	÷	
		MEMBER(J)
01.	on	The learned Member Judicial Mr. Muhammad Jamal Khan leave, therefore, the case is adjourned. To come up for the before S.R. on 26.07.2021
	San	ne before S.B on 26.07.2021.
		Reader

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

APPEAL	NÓ.		/2020
WI I FWF	110.	 	2020

MUHAMMAD IRSHAD KHAN VS

EDUCATION DEPTT:

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1.	Memo of appeal	1-3
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5.	Service Tribunal judgment	E 18-9,
6.	Vakalat nama	10

THROUGH:

UMAR FAROOO ADOCATE HIGH COURT

CELL NO 0313-8901647

Note: Sir,

Spare copies will be submitted After submission of the case.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 13180 /2020

Mr, MUHAMMAD IRSHAD KHAN PST(BPS-12) GPS GALO WARSAK, Ghalloni, District Mohmand.

Personnel Number:00103468

Diary No 1 3 430

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 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 iledto-dapayment of all outstanding amount of Conveyance allowance which have been deducted previously with all back benefits. Any egistrarother remedy which this august Tribunal deems fit that may also $\bigcap \mathcal{M}^{2}$ be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

- 1- That the appellant is serving in the Elementary & Secondary Education PST (BPS-12) quite efficiently and up to the entire Department as 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 BPS- 16 to 19 have been treated under the previous Notification by not

enhancing their conveyance allowance. Copy of the Notification dated 20.12.2012 are attached as annexure.......

- 4- That 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 the Departmental appeal &is attached as annexure.
- 6- That the appellant also prayed to be treated through the principals of consistency for allowing such relief which was granted in appeal No 1452/2019 titled Maqsad Hayat versus Education Department in Judgment Dated 11.11.2019.
- 7- That where after the appellant waited for the statutory period of ninety days but no reply has been received from the respondents. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS:

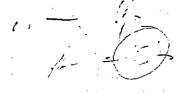
- A- That the action and inaction of the respondents regarding deduction of conveyance allowance for vacations period/months is illegal, against the law, facts, norms of natural justice.
- B- That the appellant have not been treated by the respondent Department in accordance with law and rules on the 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 aspect 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 under the golden principals of consistency.

APPELLANT
MUHAMMAD IRSHAD KHAN
THROUGH:
UMAR FAROOQ
ADVOCATE HIGH COURT

A-4





GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

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

From

The Secretary to Govt, of Khyber Pashtunkhwa, Finance Department, Pershawar.

To:

All Administrative Secretaries to Govi. of Kington Pakintonthing.

Ins Senior Member, Board of Revenue, Rhyber Poshtusiana.

3. The Secretary to Governor Knigher Paylignakawa
4. The Secretary to Chief Mickey Knigher Paylignakawa

4 The Secretary to Chief Minster, Khyber Pakhtainkiwa, S.: The Secretary, Provincial Asperator Khyber Pakhtainkhwa

5. The Secretary, Provincial Aspensiy, Khyber Pakhterkhika 5. All Hends of American Danamaritr in Figure 2 Astronovinus

All Heads of Altached Departments in Knyber Pakhtunkhwa.
 All District Coordination Officers to Khyser Pakhtunkhwa.

5 Alf Political Agents / District & Semions Judges in Khyter Paktieunkhwa

ি The Registral Pashawar Hath Cook, Peshawar

ំ ្រីកែខ Chairman, Pibblic Service Convinesion, Khyber Pokhtunkiawa.

The Charman, Berviels Thousel Kilyper Pakhtonkhwa.

运动流线。

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 Khyllet Pakhturáhvia has been pleased to enhance / ruvisc the rate of Conveyance Allowance admissible to all the Provinces Givil Servants, Govt: Of Khyber Pakhturíkhvia (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-15 will remain unchanged.

S.NO	8P5	EXISTING RATE (PM)	REVISED RATE (PM)
1.	1-4	₹≤.1,\$00/-	Rs.1,700/-
<u></u>	5-10	Rs.1,500/*	Rs.1,840/-
3.	11-15	1	Rs.2,720/-
<u> </u>	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 afficial vehicles.

Yours Faithfully,

(Sahibzada Sacod Ahmad) Secretary Finance

Endate SO. FD/SO/SR-11/8-52/2012

Dated Paylawar the 20th Decomber, 20th

A Copy is forwarded for information to the:-

1. Addoughant General Parcher Pakhturkhera, Peyhowar

2 Secretaries to Government of Punjab, Social & Solbothettan, Finance Depointment

All Automotivos / Semi Autonomous Bodies in Kinyber Pakit Lyskipae

(IMTIAZ AYUB)

Additional Secondary (Rear

NA-4

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGUALTION 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/-

Conveyance Allowance at the above rates per month shall be admissible to those BPS-17,
 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, 2012

IRSHAD.2-

Sheet no.

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	GHALANAI	:D Coc+00)1 Month:Ma	rch 2018	
	S#:1	MG0005 -	-Aaency Educ	ation Offi	ice
	Pers #: 00103468 Buckle:		in. of K.A &	N.A & S.F	= . R
	Name: MUHAMMAD IRSHAD KHAN	NTN:			
	P.T.C.TEACHER	GPF #: Old #:	•		
	CNIC No.0013978238765	. Olu #.			
	GPF Interest Applied 14 Active Permanent		MG	0005 -	
F	PAYS AND ALLOWANCES:				
	0001-Basic Pay	•		26,880.00	
	1000-House Rent Allowance	_		1,476.00	
	1210-Convey_Allowance 2005			2,856.00 1,500.00	
	1300-Medical Allowance		•	1,700.00	
	1528-Unattractive Area Allow	•		283.00	
	2148-15% Adhoc Relief Allow 010%			246.00	
	2199-Adhoc Relief Allow @10% 2211-Adhoc Relief All 2016 10%			1,840.00	
	2224-Adhoc Relief All 2017 10%			2,688.00	
	Gross Pay and Allowances			39,469.0	
г	DEDUCTIONS:				
	IT Payable 2,549.97 Deducted	6,901.00	TAX: (3609)	850.00	
	GPF Balance 41,941.00		Subrc:	2,620.00	
	3661-E.E.F (Exchange)	• •		100.00	
	3701-Benevolent Fund(Exchange)	•		180.00	
	3705-R. Ben & Death Comp(Exch)	-		600.0	U .

Total Deductions

4,350.00

35,119.00

D.O.B 18.03.1978 16 Years 03 Months 001 Days

LFP Quota: NATIONAL BANK OF PAKSHABQADAR 5279-0

Sheet no. 1

GHALANAI GHALANAI

P Sec:001 Month:July 2018 P Sec:001 Month:July 2018 MG0005 - Agency Education Officer M S#:1 s#:2 MG0005 -Agency Education Officer M Min. Of K.A & N.A & S.F.R Pers #: 00103468 Buckle: Min. Of K.A & N.A & S.F.R Pers #: 00103468 Buckle: MUHAMMAD IRSHAD KHAN Name: MUHAMMAD IRSHAD KHAN NTN: PRIMARY SCHOOL TEACHER #: PRIMARY SCHOOL TEACHER GPF #: CNIC No.0013978238765 old #: old #: CNIC No.0013978238765 GPF Interest Applied GPF Interest Applied MG0005 15 Active Permanent MG0005 15 Active Permanent PAYS AND ALLOWANCES: PAYS AND ALLOWANCES: . 29,420.00 0001-Basic Pay 5801-Adj Basic Pay 7,012.00 2,349.00 1000-House Rent Allowance 1300-Medical Allowance 1,500.00 1528-Unattractive Area Allow 2148-15% Adhoc Relief All-2013 1,700.00 283.00 2199-Adhoc Relief Allow @10% 2211-Adhoc Relief All 2016 10% 2224-Adhoc Relief All 2017 10% 2247-Adhoc Relief All 2018 10% 246.00 1,840.00 2,942.00 2,942.00 Gross Pay and Allowances
Gross Pay and Allowances 50,234.00 50,234.00 **DEDUCTIONS: DEDUCTIONS:** 229.13 Deducted 21.00 21.00 TAX: (3609) IT Payable 21.00 IT Payable 229 GPF Balance 56,832.00 229.13 Deducted 2,890.00 Subrc: Subrc: 56,832.00 GPF Balance 100.00 3661-E.E.F (Exchange) 180.00 3701-Benevolent Fund(Exchange)

Total Deductions
Total Deductions

3705-R. Ben & Death Comp(Exch)

3,791.00 3,791.00 46,443.00 46,443.00

600.00

D.O.B LFP Quota:
D.O.B LFP Quota:
18.03.1978 NATIONAL BANK OF PAKSHABQADAR
18.03.1978 NATIONAL BANK OF PAKSHABQADAR

16 Years 07 Months 001 Days 5279-0 16 Years 07 Months 001 Days 5279-0

ATTESTE TO BE True Co.

Page 1

The Secretary (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 PST (BPS-12) 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 ion vide revised Notification dated 20:12.2012 whereby the conveyance allowance for employees working in BPS 1 to 1,5 were enhance/revised while employees from BPS-15 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 the august K.P.K service tribunal also allowed the restoration of the convence allowance in its judgment dated 11.11.2019 in appeal No 1452/2019 titled Magsad Hayat versus Education Derpartment Copy attached. 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: 0**7**.0**£**2020

Your Obediently

MUHAMMAD IRSHAD KHAN

GPS GALO WARSAK.



TUNKHWA SERVICE TRIBUNA BEFORE THE KHYBER PAK

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 & VACATIONS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN 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 wedte-day previously with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in REGISTIAF favor of the appellant.

R/SHEWETH: ON FACTS:

21/31/12

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

Appeal No. 1452/2019 Marbad Hayat is Gost

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.

File be consigned to the record.

ANNOUNCED

11.11.2019

Chairman

Cardifier H

Peshawa

VAKALATNAMA

	OF 2020
	(APPELLANT)
MUHAMMAD IRSHAD KHAN	(PLAINTIFF)
	(PETITIONER)
<u>VERSUS</u>	
Education Department	(RESPONDENT) (DEFENDANT)
I/WeMUHAMMAD IRSHAD KHAN do hereby appoint and constitute UMAR FAF Peshawar to appear, plead, act, compromise, for me/us as my/our Counsel/Advocate in the a liability for his default and with the authority Advocate Counsel on my/our cost. I/we authorize withdraw and receive on my/our behalf all sedeposited on my/our account in the above noted	withdraw or refer to arbitration bove noted matter, without any to engage/appoint any other the said Advocate to deposit sums and amounts rayable to
Dated//2020	

ACCEPTED
UMAR FAROOQ
ADVOCATE