

FORM OF ORDER SHEET

Court of _____

Case No.- 13552 /2020

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 02/11/2020 | <p>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.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p> |
| 2- | 01.03.2021 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>4/3/21</u></p> <p style="text-align: right;">MEMBER(J)</p> <p>The learned Member Judicial Mr. Muhammad Jamal Khan is on leave, therefore, the case is adjourned. To come up for the same before S.B on 26.07.2021.</p> <p style="text-align: right;"><i>[Signature]</i> Reader</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

MAQSOOD ALI VS EDUCATION DEPTT:

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| 4. | Service Tribunal judgment | D | 7-8. |
| 5. | Departmental Appeal | E | 9. |
| 6. | Vakalatnama | | |

APPELLANT


THROUGH:



UMAR FAROOQ MOHMAND
ADVOCATE

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. 1355 2/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13822

Date 2/11/2020

Mr. Mqsood Ali, PST (BPS-12),
GPS, khatkishareef, District Mohmand.

.....**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 appellants.

R/SHEWETH:

ON FACTS:

- 1- That the appellants are serving in the Elementary & Secondary Education Department as PST(BPS-12) 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

Filed to-day

Registrar

2/11/20

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.....**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 the leave period. Copies of the Salary Slips of working/serving month and vacations (deduction period) are attached as annexure.....**B & C.**
- 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 conveyance 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.

GROUND:

- 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, 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.

APPELLANT


Mqsood Ali

THROUGH:

 **UMAR FAROOQ MOHMAND**

&

 **KAMRAN KHAN**
ADVOCATES



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD/SO(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-19) 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 vehicles.

Yours Faithfully,

(Sahibzada Saeed Ahmad)
 Secretary Finance

Encl: NO. FD/SO(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.

(MIAZ AYUBI)
 Additional Secretary (Reg)

ATTESTED

A-4

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

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

ATTESTED

B-5

GHALANAI
GHALANAI

S#:1
S#:2

P Sec:001 Month:August 2018
P Sec:001 Month:August 2018
MG0005 -Agency Education Officer M
MG0005 -Agency Education Officer M
Min. Of K.A & N.A & S.F.R
Min. Of K.A & N.A & S.F.R
NTN:
NTN:
GPF #: IV.EDU.MND.4555
GPF #: IV.EDU.MND.4555
Old #: 214070787521
Old #: 214070787521

Pers #: 00110581 Buckle:
Pers #: 00110581 Buckle:
Name: MAQSOOD ALI
Name: MAQSOOD ALI
PRIMARY SCHOOL TEACHER
PRIMARY SCHOOL TEACHER
CNIC No.2140707875219
CNIC No.2140707875219
GPF Interest Free
GPF Interest Free
15 Vocational Temporary
15 Vocational Temporary

MG0005 -01
MG0005 -01

PAYS AND ALLOWANCES:

PAYS AND ALLOWANCES:

| | |
|--------------------------------|-----------|
| 0001-Basic Pay | 26,760.00 |
| 2247-Adhoc Relief All 2018 10% | 2,676.00 |
| 1000-House Rent Allowance | 2,349.00 |
| 1300-Medical Allowance | 1,500.00 |
| 1505-Charge Allowance | 40.00 |
| 1528-Unattractive Area Allow | 1,000.00 |
| 2148-15% Adhoc Relief All-2013 | 519.00 |
| 2199-Adhoc Relief Allow @10% | 349.00 |
| 2211-Adhoc Relief All 2016 10% | 1,994.00 |
| 2224-Adhoc Relief All 2017 10% | 2,676.00 |
| Gross Pay and Allowances | 39,863.00 |
| Gross Pay and Allowances | 39,863.00 |

DEDUCTIONS:

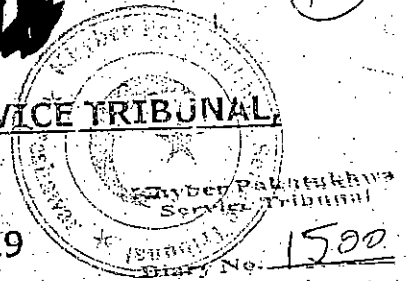
DEDUCTIONS:

| | | | | | |
|--------------------------------|-----------|----------|-------|------------|----------|
| IT Payable | 208.10 | Deducted | 42.00 | TAX:(3609) | 21.00 |
| IT Payable | 208.10 | Deducted | 42.00 | | |
| GPF Balance | 68,166.00 | | | Subrc: | 2,890.00 |
| GPF Balance | 68,166.00 | | | Subrc: | |
| 3661-E.E.F (Exchange) | | | | | 100.00 |
| 3701-Benevolent Fund(Exchange) | | | | | 180.00 |
| 3705-R. Ben & Death Comp(Exch) | | | | | 600.00 |

ATTESTED

07 ~~ER~~ 15
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1452 / 2019



Mr. Maqсад Hayat, SCT (BPS-16),
GHS Masho Gagar, Peshawar.....

Dated 24/10/2019

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 (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.

Procto-day
Registrar
24/10/19

ATTESTED

R/SHEWETH:

ON FACTS:

- 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 on vide revised Notification dated 20.12.2012 whereby the conveyance allowance for employees

EXAMINED
(Khyber Pakhtunkhwa Service Tribunal)

ATTESTED

RECORDED
14/11/19

Appeal No. 1452/2019
Marbad Hayat vs Govt

22
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.

File be consigned to the record.

ATTESTED

Chairman

ANNOUNCED

11.11.2019

ATTESTED

Certified true copy
Peshawar

E (9)

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 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 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: 15.07.2020

Your Obediently

Mqsood Ali

M. S. Ali

[Signature]
ATTESTED

ATTESTED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Mqsood Ali _____
(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

_____ (RESPONDENT)
Education Department _____ (DEFENDANT)

I/We Mqsood Ali _____

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. ____/____/2020



CLIENT



ACCEPTED
UMAR FAROOQ MOHMAND



&
KAMRAN KHAN
ADVOCATES

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