

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

NASIR ULLAH

VS

EDUCATION DEPTT:

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APPELLANT

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE

OFFICE: Flat No.4, 2nd Floor,
Juma Khan Plaza,
Near FATA Secretariat,
Warsak Road, Peshawar.
0345-9383141

Note:

Sir,

Spare copies will be submitted
After Admission of the case.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. 15987/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16567

Dated 16/12/2020

Mr. Nasir Ullah, SS (BPS-17),
GHSS Khall, Dir Lower.

.....**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

Filed to-day
Registrar
16/12/20

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..... **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 appeals 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 also filed Departmental appeal before the appellate for redressal of his grievances in light of the principle of consistency but no reply has been received from the quarter concerned. That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure..... **E.**

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, 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


NASIR ULLAH

THROUGH:


NOOR MOHAMMAD KHATTAK

&


**MIR ZAMAN SAFI
ADVOCATES**

BETTER COPY PAGE-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

17/12/12

Dist. Govt. KP-Provincial
District Accounts Office Dir at Timargar
Monthly Salary Statement (July-2020)



Personal Information of Mr NASIR ULLAH d/w/s of SADBAR KHAN

Personnel Number: 00266745 CNIC: 1530668149699 NTN:
 Date of Birth: 02.02.1971 Entry into Govt. Service: 10.12.1999 Length of Service: 20 Years 07 Months 023 Days

Employment Category: Active Permanent

Designation: SUBJECT SPECIALIST 80001497-DISTRICT GOVERNMENT KHYBE

DDO Code: DA/107-GHSS KHALL

Payroll Section: 001 GPF Section: 001 Cash Center:

GPF A/C No: Interest Applied: No **GPF Balance: 325,005.00**

Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 18 Pay Stage: 8

Wage type		Amount	Wage type		Amount
0001	Basic Pay	61,310.00	1000	House Rent Allowance	5,810.00
1925	UAA-OTHER 20%(17-22)	2,000.00	1947	Medical Allow 15% (16-22)	2,124.00
2148	15% Adhoc Relief All-2013	1,160.00	2199	Adhoc Relief Allow @10%	789.00
2211	Adhoc Relief All 2016 10%	4,281.00	2224	Adhoc Relief All 2017 10%	6,131.00
2247	Adhoc Relief All 2018 10%	6,131.00	2265	Adhoc Relief All 2019 05%	3,065.00

Deductions - General

Wage type		Amount	Wage type		Amount
3018	GPF Subscription	-5,360.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,606.00	3914	Education (ROP)	-6,096.00
3990	Emp. Edu. Fund KPK	-250.00	4004	R. Benefits & Death Comp:	-1,350.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 25,580.83 Recovered till JUL-2020: 1,606.00 Exempted: 6419.28 Recoverable: 17,655.55

Gross Pay (Rs.): 92,801.00 Deductions: (Rs.): -15,462.00 Net Pay: (Rs.): 77,339.00

Payee Name: NASIR ULLAH

Account Number: C/A 1307

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

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL.SAFARAI MALAKAND

City: DIR LOWER

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email: nasirsscchemisty@gmail.com

Dist. Govt. KP-Provincial
District Accounts Office Dir at Timargar
Monthly Salary Statement (August-2020)



Personal Information of Mr NASIR ULLAH d/w/s of SADBAR KHAN

Personnel Number: 00266745 CNIC: 1530668149699 NTN:
 Date of Birth: 02.02.1971 Entry into Govt. Service: 10.12.1999 Length of Service: 20 Years 08 Months 023 Days

Employment Category: Active Permanent

Designation: SUBJECT SPECIALIST 80001497-DISTRICT GOVERNMENT KHYBE
 DDO Code: DA/107-GHSS KHALL
 Payroll Section: 001 GPF Section: 001 Cash Center:
 GPF A/C No: Interest Applied: No **GPF Balance: 330,365.00**

Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 18 Pay Stage: 8

Wage type		Amount	Wage type		Amount
0001	Basic Pay	61,310.00	1000	House Rent Allowance	5,816.00
1210	Convey Allowance 2005	5,000.00	1925	UAA-OTHER 20%(17-22)	2,000.00
1947	Medical Allow 15% (16-22)	2,124.00	2148	15% Adhoc Relief All-2013	1,160.00
2199	Adhoc Relief Allow @10%	789.00	2211	Adhoc Relief All 2016 10%	4,281.00
2224	Adhoc Relief All 2017 10%	6,131.00	2247	Adhoc Relief All 2018 10%	6,131.00
2265	Adhoc Relief All 2019 05%	3,065.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3018	GPF Subscription	-5,360.00	3501	Benevolent Fund	-800.00
3609	Income Tax	-1,793.00	3914	Education (ROP)	-6,096.00
3990	Emp Edu Fund KPK	-250.00	4004	R. Benefits & Death Comp:	-1,350.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 28,430.80 Recovered till AUG-2020: 3,399.00 Exempted: 7107.20 Recoverable: 17,924.60

Gross Pay (Rs.): 97,801.00 Deductions: (Rs.): -15,649.00 Net Pay: (Rs.): 82,152.00

Payee Name: NASIR ULLAH
 Account Number: C/A 1307
 Bank Details: MCB BANK LIMITED, 241263 MCB BALAMBATTIMARGARA MCB BALAMBAT TIMARGARA,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: VILL.SAFARAJ MALAKAND
 City: DIR LOWER Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
 Temp. Address: City: Email: nasirsschemisty@gmail.com

Appeal No. 1452/2019
Marbad Hayat vs Govt

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.

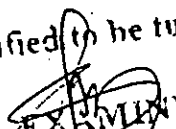
File be consigned to the record.

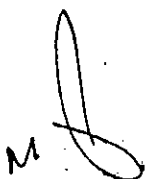

Chairman

ANNOUNCED

11.11.2019

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



To,

The Director, (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.

E-9

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) 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: 27.08.2020

Your Obediently


NASIRULLAH, SS
GHSS Khall, Dir Lower

