FORM OF ORDER SHEET

Form- A

Court of_____

Case No.-___

393/ /2020

Date of order

Order or other proceedings with signature of judge

1- 11/11/2020

proceedings

2:

S.No.

1

2-

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 ______

MEMBER(J)

01.03.2021

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.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. ___/2020

VS

GHULAM HABIB

EDUCATION DEPTT:

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INDEX		
S.NO.	DOCUMENTS	ANNEXURE PAGE
1.	Memo of appeal	······ 1- 3
2.	Notification	A 4
3.	Pay slips	B & C 5-6
4.	Departmental appeal	D 7
5.	Service Tribunal judgment	E 8-9
6.	Vakalatnama	10

APPELLANT

THROUGH:

UMAR FAROOQ ADOCATE HIGH COURT FLAT NO.4 2ND FLOOR, JUMMA KHAN PLAZA WARSAK ROAD, PESHAWAR 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. 2020

Mr, GHULAM HABIB QARI(BPS-12) GHS KOG BANDA DIST MOHMAND. PersonnelNumber:00101771

4487

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 **OKHYBER** 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 Filedto-deyacations period (Summer & Winter Vacations) and make the payment of all outstanding amount of Conveyance allowance Resistrar 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 **QARI(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 employees from

- 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......**D**.
- 5- That colleges of appellant of different caderapproached to this august tribunal in different service appeals which allowed by this august tribunal vide its judgment no 1452/2019 titled maqsadHayat versus Education Department Dated 11-11-2019.....E.
- 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.

THROUGH:

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

GHULAM HABIB

UMAR FAROOO

ADVOCATE HIGH COURT

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT (REGULATION WING)

NO. FD/SO(SR-II) 7-57/2012 Dated Peshawar the: 20-12-2012

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	Finance Department.	
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	The Secretary in Georgen Knyber Pathistens	:
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5	The Onaiman, Services Tribund, Kayoar Pakhtonikawa.	
Saties	REVISION IN THE RATE OF CONVEYANCE ALLOWANCE F	ÔŔ
α	CIVIL EMPLOYEES OF THE KHYBER PAKHTUNKHWA, PRO	VIL
· ·	GOVERNMENT 8P5 1-19	
÷.,		

Dear Sr.

주머린 NCIAL

The Government of Khyber Pakhturahwa has been pleased to enhance / revise the rate of Conveyance Allowance admissible to all the Provincial Civil Servants, Govt: of Knyber Pathtankhvia (Working in BPS-1 to BPS-13) w.e.f from 1° September, 2012 at the following rates. However, the conveyance allowance for employees in SPS-16 to RPS-19 will remain with hanged.

SNO	BP5	EXISTING RATE (PM)	REVISED RATE (PM)
1	1-4	Rs 1,500/-	Rs.1,700/-
	5-10	Ps.1,500/-	Rs.1.840/-
	11-15	Ps.2,000/-	R5.2,720/-
. <u>.</u>	16-19	R5,5,000/	R\$.5,000/-

Conveyance Allowable at the above rates per month shall be admassible to those BPS-17, 18 and 19 allocation have not been sandhored allicial vehicles.

ours Fashiully, (Sahipzada Saood Ahmad)

Secretary Firence

(INTIAZ AYUB) Additional Socialary (Rom

Dated Posterwar the 20" December, 2017 Endan: ND. FD:SO(SR-II):8-52/2012

A Copy is forwarded for information to the:-

Association General, Kingber Pakhturikima; Pesinekar Beereisties ID Government of Punios, Sciah & Saboration Fondisti D All Autoremous / Stored Autonormous Bodies in Kingber Pakittankhika

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

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 Pakhturkhwa.
- 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 "Pakhturikhwa (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.

1	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, 2 18 and 19 officers who have not been sanctioned official vehicle.

Your Faithfully 😽

(Sahibzada Saeed Ahmad) Secretary Finance

Dated Peshawar the 20th December, 2012

Endst No. FD/SO(SR-II)8-52/2012

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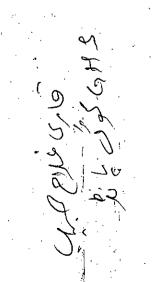
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The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.

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 QARI (BPS-12) quite efficiency and up to the entire satisfaction of the superiors: It is stated for kind iformation 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 15 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 Maqsad 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: 20.07.2020

Your Obediently

GHULAM HABIB GHS KOG BANDA DIST MOMAND



	•.,
FORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL	
PESHAWAR PESHAWAR	
ADDEAL NO 1452 /2019 1000 1500	
APPEAL 110 Darco 24/10/2019	
Mr. Maqsad Hayat, SCT (BPS-16), APPELLANT	
GHS Masho Gagar, Peshawar	
VERSUS	
1- The Government of Khyber Pakhtunkhwa through Chief Secretary,	
1- The Government of Khyber Pakhtunknwa unough end	
Chubor Dakhtilliki.War Condition public public Peshawa	
2- The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar. 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.	
 3- The Secretary Finance Department, Knyber Pukhtunkhwa, Peshawar. 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar. 	
 4- The Accountant General, Khyber Pakhtunkhwa, Peshawar. 5- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar. 	
APPEAL UDNER SECTION-4 OF THE KHYBER PAKHTUNKHWA	
APPEAL UDNER SECTION-4 OF THE KHIBER FAILURED SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SERVICE TRIBUNAL ACT, 1974 AGAINST BY ILLEGALLY AND	۰.
SERVICE TRIBUNAL ACTY INCE ALLOWANCE	
ACTION OF DEDUCTING THE CONVEYANCE ALLOUMMER	
DIRING VALUE	
VACATIONS AND AGAINST WE APPELLANT WITHIN THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE DEPARTMENTAL APPEAL OF NINETY DAYS.	
DEPARTMENTAL APPEAD IS STATUTORY PERIOD OF NINETY DAYS.	
the recoondents may	
PRAYER: That on acceptance of this appeal the respondents may kindly be directed not to make deduction of conveyance kindly be directed not to make deduction of conveyance during vacations period (Summer & Winter	
Vacations) and mance which have been of conveyance allowance allow	
Registrar favor of the appellant.	
24/18/01	
R/SHEWETH: Khyber Wa	
ON FACTS:	
1- That the appellant is serving in the elementary arises during in the elementary arises duri	
education department as Certified Teacher (or section of the superiors.	
education department as Certified Teacher (and up to the entire satisfaction of the superiors.	
(1) (2011 dated	
2- That the Conveyance Allowance is admissible to all the Civil Science dated and to this effect a Notification No. FD (PRC) 1-1/2011 dated and to this effect a Notification vide revised Notification dated	
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20.12.2012 whereby the conveyance and a second	
14.07.2011 was issued. That later for employees 20.12.2012 whereby the conveyance allowance for employees	

and the second second

11.11.2019

Counsel for the appellant present.

Appleal No. 1455/2019 Markad Hayat vs Giovt

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.

1722 (17

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 protractover 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. <u>(ED</u> P.L

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ANNOUNCED

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Poshawaz

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TIBUNAL, PESHAWAR

_____OF 2020

GHULAM HABIB

(APPELLANT)

_____(PLAINTIFF)

(PETITIONER)

VERSUS

Education Department

(RESPONDENT) (DEFENDANT)

I/WeGHULAM HABIB

do hereby appoint and constitute **UMAR FAROOQ, Advocate, High court, 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 ADVOCATE