BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1790/2019

Date of Institution	...	16.12.2019
Date of Decision	...	24.11.2021

Behroz Khan Assistant Sub Inspector No.P/402 Incharge Police Post, Saddar Garhi, Police Station, Shabqadar, District Charsadda.

... (Appellant)

VERSUS

The Provincial Police Officer, Government of Khyber Pakhtunkhwa Peshawar and two others.

... (Respondents)

Rizwan Ullah, Advocate	...	For appellant.
Kabir Ullah Khattak, Additional Advocate General	...	For respondents.

Rozina Rehman	...	Member (J)
Atiq ur Rehman Wazir	...	Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant's case in brief is that adverse remarks were communicated to the appellant from his Performance Evaluation Report for the period from 01.01.2017 to 12.07.2017. Feeling aggrieved, he filed departmental appeal for expunction of the impugned adverse remarks but his appeal was rejected, hence, the present service appeal.

2. We have heard Rizwan Ullah Advocate learned counsel for appellant and Kabir Ullah Khattak, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

24/11/21

3. Rizwan Ullah Advocate, learned counsel for appellant submitted that the adverse observations made in his Performance Evaluation Report are factually incorrect and that they have been made in disregard of the relevant instructions which serve as Guide to Performance Evaluation. It was further pleaded that the appellant was not treated in accordance with law and rules and that the respondents acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973; that the appellant rendered 33 years service, however no adverse remarks were ever recorded in his previous Annual Confidential Reports except the present one and that the unblemished record of the appellant cannot be brushed aside easily. Reliance was placed on 2007 SCMR 1251 and 1993 PLC (C.S) 332. He submitted that on one hand, the Reporting Officer recorded under Column-B the following remarks:

"Column-B- Is he honest? - - - - - - - - - - - - No"

Whereas in the general column, he awarded the appellant exemplary remarks as "**Fairly Good Officer".** He submitted that this glaring contradiction has made the case of the Reporting Officer as doubtful and lastly, he submitted that neither any warning was given to the appellant nor any disciplinary action was initiated in view of the comments of respondents No.2 & 3 which shows that there was no cogent evidence with the Reporting Officer in order to substantiate the guilt of the appellant. He, therefore, requested that the impugned adverse remarks and the rejection order may be declared as illegal, unlawful and without lawful authority and the disputed remarks may kindly be expunged.

24/11/21

4. Conversely, learned AAG submitted that the appellant was not promoted in the DPC due to the fact that he had been awarded

adverse remarks for the period from 01.01.2017 to 12.07.2017 as **"Corrupt Officer"** and these remarks were conveyed to the appellant for proper information. He contended that the appellant was treated in accordance with law and rules and that length of service or having no adverse remarks during the entire service does not provide any immunity to any officer for his future misconduct.

5. From the record it is evident that appellant was serving as Sub Inspector at the relevant time when his case for promotion as Inspector was placed before the Departmental Promotion Committee wherein it was noticed that the appellant had been awarded adverse remarks for the period from 01.01.2017 to 12.07.2017 but these remarks had not been conveyed to him, therefore, it was ordered that the said adverse remarks may be conveyed to the appellant in order to offer defense in support of his version. We have given due consideration to the adverse observations in the light of relevant instructions and we are obliged to observe that some of them do not appear to have been strictly observed. It is provided in the Guide that when adverse remarks are made in the Confidential Report of any officer, a copy of the whole report should be furnished to him at the earliest opportunity. In the instant case the adverse remarks of the year 2017 were communicated to the appellant in the year 2019. Reference may also be made to the instruction in Pare 2.5 (iii) of the Guide which provides that the assessments recorded in different part of the ACR Form should be in conformity with each other. In the present case, however, we find that the adverse remarks made by the Reporting Officer are not consistent with certain other entries of the report. The Reporting Officer recorded under Column-B the following remarks.

24/4/21

"Column-B- Is he honest? - - - - - - - - - - - - No"

However, in the General Column, he was awarded exemplary remarks as "**Fairly Good Officer".** This opinion is clearly inconsistent with what he has said in Column-B of the report. We fail to understand how a dishonest officer can be a good officer.

6. Another instruction is that the Reporting Officer is expected to counsel the officer being reported upon about his weak points and advise him how to improve and that adverse remarks should ordinarily be recorded when the officer fails to improve despite counselling. In the present case, however, there is nothing in writing to show that such counselling was ever administered to the appellant. In view of the importance of this instruction, the Reporting Officer, or the Countersigning Officer should not only impart appropriate advice but also keep a record of such an advice having been duly administered.

7. For the reasons mentioned above, we are of the opinion that the adverse remarks in this case have been recorded in disregard of the relevant instructions. These are accordingly expunged from the appellant's Annual Confidential Report concerned, in acceptance of the instant appeal. There will be no order as to costs. File be consigned to the record room.

ANNOUNCED.
24.11.2021

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

Order
24.11.2021

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present. Arguments heard and record perused.

Vide our judgment of today of this Tribunal placed on file, we are of the opinion that the adverse remarks in this case have been recorded in disregard of the relevant instructions. These are accordingly expunged from the appellant's Annual Confidential Report concerned, in acceptance of the instant appeal. There will be no order as to costs. File be consigned to the record room.

Announced.
24.11.2021

(Atiq ur Rehman Wazir)
Member(E)

(Rozina Rehman)
Member (J)

31.03.2021 Appellant in person present.

Addl: AG alongwith Mr. Fayaz, H.C for respondents present.

Written reply/comments on behalf of respondents submitted which is placed on file.

To come up for rejoinder and arguments on 27.07.2021 before D.B.

(Atiq Ur Rehman Wazir)
Member(E)

14.07.2021 Appellant in person present.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former made a request for adjournment as his counsel is indisposed. Request is accorded. To come up for arguments on 24.11.2021 before D.B.

(Rozina Rehman)
Member (J)

Chairman

30.12.2020 Appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Written reply on behalf of respondents not submitted. Learned District Attorney seeks time to contact the respondents for submission of written reply/comments on the next date.

Adjourned to 24.02.2021 before S.B.

(Mian Muhammad)
Member(E)

24.02.2021 Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Fayyaz, Head Constable, for the respondents are also present.

Written reply on behalf of respondents not submitted. Representative of the department is seeking further time for submission of written reply/comments. Last chance is given to the respondents for filing of written reply/comments on 31.03.2021 before S.B.

(Muhammad Jamal Khan)
Member

21.07.2020 Appellant himself is present. Notices to respondents could not be issued due to public holidays on account of COVID-19, therefore, fresh notices be issued to the respondents for submission of written reply/comments. To come up for written reply/comments on 16.09.2020 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER

16.09.2020 Nemo for appellant. Addl. AG on behalf of the respondents present.

Learned AAG requests for time to contact the respondents and submit written reply/comments. Adjourned to 05.11.2020 on which date reply/comments shall be submitted positively. Appellant/learned counsel shall be put on notice for the next date of hearing.

Chairman

05.11.2020 Appellant is present in person. Mr. Kabirullah Khattak, Additional AG for the respondents is also present.

Written reply on behalf of respondents not submitted. Learned Additional AG request for further time to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 30.12.2020 on which date written reply/comments shall be positively submitted.

(MUHAMMAD JAMAL KHAN)
MEMBER

11.03.2020 Appellant with counsel present. Preliminary arguments heard.

The appellant (Assistant Sub Inspector) has filed the present service appeal for expunction of adverse remarks for the period w.e.f 01.01.2017 to 12.07.2017 recorded in his Annual Confidential Report. Departmental representation filed by the appellant for the expunction of adverse remarks was filed vide order dated 02.10.2019.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 30.04.2020 before S.B.

Appellant Deposited Security & Process Fee

Member

30.04.2020 Due to COVID19, the case is adjourned to 21.07.2020 for the same as before.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1790/**2019**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/12/2019	The appeal of Mr. Behroz Khan presented today by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR 16/12/19
2-	18/12/19.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 24/01/20 CHAIRMAN
	24.01.2020	Junior to counsel for the appellant present. Requests for adjournment due to general strike of the Bar. Adjourned to 11.03.2020 before S.B. Chairman

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1790 /2019

1. Behroz Khan Assistant Sub-Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, Shabqadar, District Charsadda.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Service Appeal	_	1-7
2	Affidavit	_	8
3	Copy of letter No. 2904 dated 06-08-2019	"A"	9
4	Copy of departmental appeal	"B"	10
5	Copy of Comments with enclosures	"C"	11-13
6	Copy of rejection Order dated 02-10-2019	"D"	14
7	Copy of application	"E"	15
8	Wakalatnama	—	16

Appellant

Through

Dated: 16-12-2019

Rizwanullah
M.A. LL.B
Advocate High Court,
Peshawar

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1790 /2019

1. Behroz Khan Assistant Sub-Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, Shabqadar, District Charsadda.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region, Mardan.
3. The District Police officer, Nowshera.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXPUNCTION OF ADVERSE REMARKS FOR THE PERIOD FROM 01-01-2017 TO 12-07-2017 RECORDED IN THE ANNUAL CONFIDENTIAL REPORT OF THE APPELLANT WHICH WERE CONVEYED TO HIM THROUGH LETTER NO. 2904 DATED 06-08-2019 AGAINST WHICH A DEPARTMENTAL APPEAL WAS FILED WITH THE PROVINCIAL POLICE OFFICER, KHYBER PAKHTUNKHWA (RESPONDENT NO. 1) ON 17-08-2019 BUT

THE SAME WAS REJECTED ON 02-10-2019.

Prayer in Appeal

By accepting this appeal, the impugned adverse remarks for the period from 01-01-2017 to 12-07-2017 and rejection order dated 02-10-2019 may graciously be declared as illegal, unlawful and without lawful authority and the disputed remarks may kindly be expunged.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

Respectfully Sheweth,

Short facts giving rise to the present appeal are as under:-

1. That the appellant joined the Police force in-capacity as Constable on 22-05-1985. He rose up to the post of sub-Inspector on account of his dedication, devotion and commitment to his job. He had 33 years unblemished service record to his credit.

2. That the appellant was serving as Sub-Inspector at the relevant time when his case for promotion as Inspector was placed before the Departmental Promotion Committee wherein, it was noticed that the appellant was awarded adverse remarks for the period from 01-01-2017 to 12-07-2017. But these remarks were not conveyed to him. Therefore, it was ordered that the said adverse remarks may be conveyed to the appellant in order to offer defense in support of his version and that his signature may also be obtained as a token of its acknowledgment vide letter No. 2904 dated 06-08-2019 and the needful was done accordingly.

(Copy of letter No. 2904 is appended as Annex-A)

3. That the appellant felt aggrieved, filed a departmental appeal with the Provincial Police Officer, Khyber Pakhtunkhwa (respondent No. 1) on 17-08-2019 for expunction of impugned adverse remarks, who called for the comments of respondent No. 2 which were furnished with its enclosures vide letter No. 390 dated 18-09-2019 and ultimately, the departmental appeal was rejected. However, no endorsement whatsoever was made in respect of appellant to know about the fate of his departmental appeal. Therefore, the appellant submitted an application to the respondent No. 2 on 23-11-2019 requesting him to provide any order, if passed, regarding his departmental appeal. The appellant was then provided a copy of rejection order on 25-11-2019.

(Copy of Departmental appeal, comments, rejection order and application are appended as Annex-B, C, D and E respectively.)

4. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

GROUNDS OF APPEAL

A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.** Therefore, the impugned orders are not sustainable in the eye of law.

B. That the appellant has rendered 33 years service however, no adverse remarks whatsoever were ever recorded in his previous Annual

Confidential Reports except the disputed one. Needless to add that the unblemished service record of the appellant which is free from any adverse entry throughout, cannot be brushed aside easily. Reliance in this respect can be placed on the judgment of **August Supreme Court of Pakistan reported in 2007 SCMR 1251 (Citation–C).** The relevant citation is reproduced as under:-

(c) Civil service---

> **----Annual Confidential Report---Expunction of adverse remarks---Civil servant having a long tenure of service of about 23 years had not been given any adverse remarks except the one in question---Service Tribunal had given sufficient reasons for the interference by expunging the adverse remarks from the Annual Confidential Reports and no justification existed to differ with the impugned judgment---Supreme Court dismissed the appeal against order of Service Tribunal in circumstances.**

Thus, the impugned adverse remarks and rejection order dated 02-10-2019 are not sustainable in the eye of law.

C. That the appellant has worked under the supervision of Reporting Officer for many years at different stations. But he has awarded him good remarks in his Annual Confidential Reports. However, it is curious to note that the same Reporting Officer while writing the ACR of the appellant for the disputed period has given adverse remarks to him without any cogent and valid reasons. Moreover, The conflict / clash between the two sets of Annual Confidential Reports was not explained to comprehend the real fact of the case. Thus, it clearly depicts that the Reporting officer was biased and prejudiced towards the appellant so as to damage his career and also to deprive him of his due right of promotion to the post of Inspector. It is well settled law that Reporting Officers are bound to keep in mind **"that writing of Annual Confidential Report was not only a sacred trust reposed in them by Government but it involved the career of an officer**

and personal likes and dislikes, bias and malafides must be kept aside".

Therefore, the impugned adverse remarks and rejection order dated 02-10-2019 are not tenable under the law.

D. That it is highly amazing to note that on the one hand, the reporting officer has recorded under column-B the following remarks: -

"**Column-B**" Is he honest? **No.**

Whereas, in the general column, he awarded the appellant exemplary remarks as "**fairly good officer**" Now, the question would arise that simultaneously, how an employee would be dishonest and fairly good officer. This glaring contradiction in the above entries would definitely make the case of reporting officer as exceedingly doubtful which nullifies the validity of disputed remarks. Hence, the impugned adverse remarks and the rejection order dated 02-10-2019 are required to be declared as illegal on this count alone.

E. That the respondent No. 2 and 3 have stated in their comments submitted to respondent No. 1 that the appellant while posted as SHO PS, Nizampur **"promoted Gul Mathi named gang in Nizampur area. He was dishonest to discharge his duties knowing all professional tricks to facilitate the gang please"**. But neither any warning was given to him nor any disciplinary action was initiated in this respect notwithstanding the gravity of allegation putting at stakes the honesty of the appellant. This clearly shows that there was neither any cogent and concrete evidence with the reporting officer nor he had any documentary proof in order to substantiate the guilt of the appellant. Besides, no opportunity whatsoever was given to him to rebut the allegations levelled against him in the disputed Annual Confidential Report. It is well-settled law that mere oral and general

assertion on the part of any party will not be justified unless proved by dependable evidence and documentary proof. It is evenly important to highlight that the appellant has performed his duty justly, fairly, honestly and also in accordance with law therefore, no adverse remarks whatsoever were awarded to him during the entire service spreading over 33 years except the disputed one. Thus, the impugned adverse remarks as well as rejection order dated 02-10-2019 are bad in law.

F. That the countersigning officer was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law and to see whether the reporting officer has fulfilled all the mandatory requirements of law before recording the disputed remarks in the Annual Confidential Report of the appellant or otherwise. But he has overlooked this imperative aspect of the case without any cogent and valid reasons and agreed with the reporting officer and countersigned the report as correct. Therefore, the impugned adverse remarks as well as rejection order dated 02-10-2019 are not warranted by law.

G. That the appellate authority (respondent No. 1) was legally bound to have applied his independent mind to the merit of the case by taking notice about illegality and lapses committed by the reporting officer as well as countersigning authority as enumerated in earlier paras. But he failed to do so and rejected the departmental appeal unlawfully. Hence, the impugned adverse remarks and rejection order dated 02-10-2019 are against the spirit of administration of justice.

H. That the impugned adverse remarks as well as rejection order dated 02-10-2019 suffer from legal infirmities and as such cause grave miscarriage of justice to the appellant.

I. That the adverse remarks in question and rejection order dated 02-10-2019 are against law, facts of the case and norms of natural justice. Therefore, these are untenable in the eyes of law.

J. That the disputed remarks and rejection order dated 02-10-2019 are based on conjectures, surmises and suppositions. Hence, the same are bad in law.

K. That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that by accepting this appeal, the impugned adverse remarks for the period from 01-01-2017 to 12-07-2017 and rejection order dated 02-10-2019 may graciously be declared as illegal, unlawful and without lawful authority and the disputed remarks may kindly be expunged.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Appellant

Through

Rizwanullah
M.A. LL.B
Advocate High Court,
Peshawar

Dated: 16-12-2019

(8)

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No._____/2019

1. Behroz Khan Assistant Sub-Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, Shabqadar, District Charsadda.

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

AFFIDAVIT

I, Behroz Khan Assistant Sub-Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, Shabqadar, District Charsadda, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Deponent

ATTESTED
JAVED MOHAMMAD ADVOCATE
High Court Peshawar
NOTARY PUBLIC
District Court Peshawar
16/9/19

313/PA

Annex - A

(9)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 2904 / 19, Dated Peshawar the 06-08/2019.

To:- The Regional Police Officer,
Mardan Region, Mardan.

Subject: - **ACR/COMMUNICATION OF ADVERSE REMARKS**

Memo:

In the Annual Confidential Report on the working of Sub-Inspector Behroz Khan No. P/402 for the period/year **01.01.2017 to 12.07.2017** it has been mentioned that:-

Reporting Officer Remarks

Is he honest?....................................."No"

2nd Countersigning Officer Remarks

"Convey as Adverse"

***

The above adverse remarks may please be conveyed to the official concerned in order that he may remedy the defects. Representation if made should be sent not later than one month from the date of receipt of this communication.

The acknowledgement as token of the receipt of this memo: may be obtained from him on the attached duplicate copy of this communication and returned to this office for record in his Character Roll Dossier.

PA-ACR clerk
for n/action please
RPO Mardan
718

Diary No. 255/AS
Date 7-08-019

(SADIQ BALOCH)PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Attested
Appellant

Annex-B (10)

جناب عالی:۔

معروض خدمت ہوں کہ سائل حوض 22/5/1985 کو بحیثیت کنسٹبل بھرتی ہوکر ریگروٹ تا ایکور میں سائل نے نہایت نمایاں پوزیشنیں لیکر پاس کیئے ہیں۔ یہ کہ سائل کی کارکردگی اور آنتھک محنت ایمانداری کو دیکھتے ہوئے آفسران بالا نے ریڈر DPOS ساجبان، نقشہ نویس چوکیات میں انچارج اور کئی تھانوں میں بحیثیت SHO لگایا ہے۔ بحوالہ نوٹیفکشن نمبری 4747.59 مورخہ 19/03/2018 OB نمبری 156 مورخہ 18/05/11 کو بحیثیت سب انسپیکٹر پروموٹ ہوا ہوں۔ میری کارکردگی پر آفسران بالا نے مختلف تعریف سرٹیفیکیٹ دی ہے۔ سائل نے تمام تر نوکری ایمانداری سے سرانجام دی ہے **اسلیئے سائل کا ابھی تک اپنی آبائی زمین کے ہوتے ہوئے، اپنا ذاتی مکان نہیں ہے نہ ہی میرا بینک بیلنس یا کوئی کاروبار ہے؟ میں عرصہ 8/9 سال سے کرایہ کے مکان میں رہائش پذیر ہوں۔**

یہ کے سائل کو بحوالہ نمبری 309 مورخہ 8/08/19 کو ADVERSE ریمارکس ACR ملا ہے۔ قبل از میں سائل کو خراب ACR نہیں ملا ہے۔ نہ ہی سائل کو کوئی وارننگ وغیرہ ملی ہے۔ نہایت آداب واحترام کے ساتھ معروض خدمت ہوں کہ سائل کے پہلے والے سروس اور کارکردگی کو مدنظر رکھتے ہوئے میرے اس خراب ACR کو ختم کی جائے۔ جسکے پیرڈ 01/01/17 تا 12/07/17 تک ہے۔ سائل پروموشن زون میں ہے۔ اس خراب ACR سے سائل کے نوکری پر کافی اثر پڑھ رہا ہے۔ لہذا بزریعہ درخواست استدعا ہے کہ سائل کی **ACR پریڈ 01/01/17 تا 12/07/17 کو (EXPUNGED) کرنے کا حکم صادر فرما کر مشکور فرمادیں۔**

سائل تا حیات دعا گو رہیگا۔

العارض

بہروز خان 17/08/2018

آپکا تابع فرمان بہروز خان نمبر P/402 ASI متعینہ انچارج چوکی صدر گڑھی تھانہ شبقدر ضلع چارسدہ۔

Attested
Appellant

Annex-C (11)

GOVERNAMENT OF KHYBER PAKHTUN KHWA
OFFICE OF THE REGIONAL POLICE OFFICER
MARDAN
Phone No.0937-9230113-114, Fax No. 0937-9230115
Email add: DIGMardan@gmail.com

To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

No. 390 **/PA/ACR,** dated, Mardan Region the **18/09/2019**

Subject: **ANNUAL CONFIDENTIAL REPORT/COMMUNICATION OF ADVERSE REMARKS**

Memo:

Kindly refer to your office Memo: No. 2904/19, dated 06.08.2019.

The Annual Confidential Report on the working of the then SI Behroz Khan No. P/402 now ASI for the period from **01.01.2017 to 12.07.2017**, the following observation has been made **Class of Report "B":-**

IS HE HONEST,?

"NO"

REMARKS

"FAIRLY GOOD OFFICER"

The above adverse remarks were conveyed to the officer. He submitted representation for expunction of these remarks. The representation was sent to the District Police Officer, Kohat for comments vide this office No.325/PA/ACR, dated 23.8.2019.

The comments of the Reporting Officer, Nowshera now Kohat (Mr. Wahid Mehmood PSP) received vide his office No. 18049/PA, dated 05.9.2019 which revealed that SI Behroz Khan while posted as SHO PS Nizampur **"promoted Gul Mati named gang in Nizampur area. He was dishonest to discharge his duties knowing all professional tricks to facilitate the gang please".**

Attested
For
Appellant

Regional Police Officer,
Mardan.
O/C

(12)

OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT
Tel: 0922-9260116 Fax 9260125

294
18.09.2019

No. 18049 /PA, dated Kohat the 05-9 /2019

To: - The Regional Police Officer, Mardan

Subject: - **ANNUAL CONFIDENTIAL REPORTS / COMMUNICATION OF ADVERSE REMARKS**

Memo: -

Kindly refer to your office Memo: No. 325/PA/ACR dated 23.08.2019.

It is submitted that ASI Behroz Khar No. 402 promoted Gul Mati named gang in Nizampur area. He was dishonest to discharge his duties knowing all professional tricks to facilitate the gang please.

DISTRICT POLICE OFFICER,
KOHAT 05/9.

Attested
Appellant

(13)

Police No.99

GS&PD,NWFP. 1559 F.S. 500P. of 100-9-12-1990-(62)

POLICE DEPARTMENT

DISTRICT NOWSHERA

No.13-17

Annual Confidential Report on the working of Assistant Sub-Inspector, Sub-Inspectors and Inspectors for the year ending 31st December, 2017.

Name, Provincial or Range No.	**SI Behroz Khan No. P/402**
Father's Name	**Nasrullah Khan**
Where and on what duties Employed during the past 12 Months	**01.01.2017 to 18.01.2017, Police Lines, 19.01.2017 to 30.03.2017, SHO PS, Nizampur, 31.03.2017 to 08.05.2017, SHO PS, Akora, 09.05.2017 to 12.07.2017, ASHO PS, Pabbi, & then transferred to Inv: Wing.**
Class of Superintendent of Police's Report, i.e. "A" "B" or "C"	B
Is he honest?	Yes
Remarks by:- **1. Superintendent of Police,** **2. Regional Deputy Inspector General of Police.**	Fairly good officer **(WAHID MEHMOOD)PSP** **District Police Officer,** **Nowshera**

Attested
&
Appellant

407/PA

Annex-D

(14)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE

KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 3512-19 /19, Dated Peshawar the 02/10/2019.

ORDER

This order pertains to the representation preferred by Sub-Inspector Behroz Khan No. P/402 of Mardan Region for the expunction of Adverse Remarks contained in his ACR for the period from 01.01.2017 to 12.07.2017 recorded by the reporting officer Mr. Wahid Mehmood the then District Police Officer, Nowshera. Comments were also obtained, the reporting officer submitted that ASI Behroz Khan (the then Sub-Inspector) promoted Gul Mati named gang in Nizampur area. He was dishonest to discharge his duties knowing all professional tricks to facilitate the gang.

After going through the relevant record, comments and material on record the Adverse Remarks recorded in his ACR for the period from 01.01.2017 to 12.07.2017 are maintained and his representation is hereby filed.

Sd/-
Dr. Ishtiaq Ahmed, PSP
Addl: IGP/HQrs:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Attested
Appellant

Endst: No. & date even.

Copy of above is forwarded for information and necessary action, to the:-

1. Regional Police Officer, Mardan Region, Mardan w/r to his memo: No. 390/PA/ACR, dated 18.09.2019. Necessary entry into this effect may also be made in his Duplicate Character Roll Dossier. The Representationist may please be informed accordingly.
2. Office Supdt: CP Branch CPO..
3. Office Supdts: "E-II & E-III" Branch, CPO.

PA
PPS Pl.
4/10/19.

PA-BRANCH
Office Of the D I G Police
Mardan
318 /PA/ACR
4-10-2019

(SADIQ BALOCH)PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Received on 25-11-2019
Asi I/C PP Saddar Garhi
25-11-2019

Annex-E (15)

جناب عالی،

معروض خدمت ہوں کہ میں Asi سے ایک نقل کاپی بابت ACR سال 2017 بمعہ ان لکھن ANNUAL CONFIDENTIAL REPORT/COMMUNICACTION OF ADVERSE REMARKS - dated 309/PA/ACR 08-08-2019

موصولہ 17/8/19 دفتر ہذا سے حاصل کرکے اسی روز ایک درخواست 200-S 17.8.19 EXPUNGED ACR کے لیئے واپس آفسران بالا کے ذریعہ دی تھی۔ جسکی واپسی جواب۔ میں Asi کو تاحال نہیں ملا ہے

بذریعہ درخواست استدعا ہیکہ میں Asi کو اپنی درخواست پر آفسران بالا کی لاپرواہی کی نقل کاپی دے کر مشکور فرمادیں۔

سائل تابعدار دعاگو رہیگا

22-11-19

0306-8080088

العارض

آپکا تابعدار بہمراہ زخمی Asi نمبر 405/P متعینہ انچارج چوکی جہانگیرہ تھانہ شاہکار

نوٹ: مسل درخواست ہمراہ ہے۔

Sir forwarded

SHO PS SOR

23-11-2019

Attested

Appellant

Before the Hon'ible Chairman, KPK Service Tribunal, Peshawar.

بعدالت

Service Appeal

(Appellant) منجانب 2019

Behroz Khan

بنام

VS

Provincial Police Officer and others

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام Peshawar کیلئے ~~Rizwanullah Adv~~
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 12-12-2019 ماہ December 12th, 2019

العبد گواہ العبد

بمقام کے لئے منظور ہے

Appellant

Attested & accepted
12-12-2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1790/2019

Behroz Khan Assistant Sub Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, shabqadar, District Charsadda.

.....**Appellant**

V ERSUS

The Provincial Police Officer, Governemnt of Khyber Pakhtunkhwa and others.

.....**Respondents**

INDEX

S.No.	Description of documents	Annexure	Pages
1.	Reply of Respondents	-	1-3
2.	Affidavit	-	04
3.	List punishments.	A	05
4.	Copy of order	B	06
5.	Copy of ACR	C	07

Inspector Legal,
Nowshera

(1)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1790/2019

Behroz Khan Assistant Sub Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, shabqadar, District Charsadda.

.....**Appellant**

V ERSUS

The Provincial Police Officer, Governemnt of Khyber Pakhtunkhwa and others.

.....**Respondents**

PARAWISE REPLY ON BEHALF OF RESPONDENT NO. 01 TO 03

Respectfully Sheweth: -

That the respondents submitted as under: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action to file instant appeal.
2. That the appeal is badly barred by law and limitations.
3. That the appellant has been estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.
6. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

On Facts

1. Correct to the extent that the appellant is employee of respondent department. During service his performance was not upto mark. List of bad entries enclosed as annexure "**A**".
2. Correct to the extent that appellant was not promoted as Inspector in the DPC due to the fact that he had been awarded adverse remarks for the period from 01-01-2017 to 12-07-2017 as "corrupt officer" and these remarks were also, later on conveyed to the appellant for proper information and defense.
3. Correct to the extent that appellant preferred representation before Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar for the expunction of adverse remarks contained in his ACR for the period from 01-01-2017 to 12-07-2017 recorded by the reporting officer the then District Police Officer, Nowshera. On his representation, comments were sought from the reporting officer who submitted that appellant SI Behroz Khan promoted Gulmati named gang in Nizampur area. He was dishonest to discharge his duties knowing all professional tricks to facilitate the gang. Hence, the adverse remarks recorded in the ACR for the period of 01-07-2017 to 12-07-2017 were maintained and his representation was filed. (Copy of order is annexed as annexure **"B"**). He was well aware regarding rejection of his representation.

4. That the appeal of the appellant is liable to be dismissed on the following grounds: -

GROUNDS

A. Incorrect. That appellant has been treated in accordance with law and rules by respondents, hence, orders passed by the respondents are liable to be maintained.

B. Incorrect. The length of service or having no adverse remarks during the entire service does not provide any immunity to any Officer/Official for his future misconduct.

C. That spirit of the ACR is to evaluate the performance of Police Officer/Official for each year. If a Police Officer/Official performs well, he is awarded ACR with "A" category alongwith appreciating remarks. However, if the performance of an officer/official is not satisfactory, it is the discretional powers of the reporting officers to award him adverse remarks.

D. Incorrect. As per available ACR of the appellant in record, in general column remarks awarded by the reporting officer are as "corrupt officer". (Copy of ACR is annexed as annexure "C").

E. Incorrect. When the presentation was made by the appellant, the same was sent to the reporting officer the then DPO Nowshera, who vide his letter No. 18049/PA, dated 05-09-2019, passed the remarks that **"ASI Behroz Khan No. 402 promoted Gul Mati named gang in Nizampur area. He was dishonest to discharge his duties knowing all professional tricks to facilitate the gang".** The orders of respondents are legal, lawful and in accordance with fact.

F. Incorrect. The countersigning officer agreed with the remarks passed by the reporting officer, because, reporting officer happens to be the immediate boss/officer of the subordinate officer/official in respect of whom remarks are passed and reporting officer remains well aware of the performance of his subordinates. On the basis of performance of subordinate officer/official remarks are made by the reporting officer in his ACR. The countersigning authority has acted in accordance with facts and rules.

G. Incorrect. As explained in the preceding paras, when appellant moved representation before respondent No. 01, comments were sought from the reporting officer and on the report of the reporting officer, representation of the appellant was filed in accordance with facts and rules.

H. Incorrect. The appellant being corrupt, dishonest in performance of official duties was awarded adverse remarks in the ACR and for the same reasons his

representation was also filed by the appellate authority which is justified under the rules.

I. Incorrect. The remarks/rejection order of the respondents are based on facts, justice and in accordance with rules.

J. Incorrect. The remarks and orders are well reasoned, convincing and based on facts.

K. The respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.

Prayers

Keeping in view of the above stated facts, it is, most humbly prayed that the appeal of the appellant being badly barred by law and devoid of legal force, may very kindly be dismissed with cost.

Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No.1

Regional Police Officer,
Mardan Region-I, Mardan.
Respondent No. 02

District Police Officer,
Nowshera.
Respondent No.03

(4)

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1790/2019

Behroz Khan Assistant Sub Inspector No. P/402 Incharge Police Post, Saddar Garhi, Police Station, shabqadar, District Charsadda.

.....**Appellant**

V ERSUS

The Provincial Police Officer, Governemnt of Khyber Pakhtunkhwa and others.

.....**Respondents**

AFFIDAVIT

We the respondents No. 1,2&3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.

Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No.1

Regional Police Officer,
Mardan Region-I, Mardan.
Respondent No. 02

District Police Officer,
Nowshera.
Respondent No.03

(5) "A"

LIST OF PUNISHMENT AWARDED TO APPELLANT SI BEHROZ KHAN

1. Awarded major punishment of reduction in rank (Sub Inspector to ASI) vide OB No. 18 dated 07-01-2019.
2. Awarded minor punishment of stoppage of 02 annual increments with cumulative effect vide OB No. 795 dated 10-06-2015.
3. Awarded minor punishment of censure vide OB No. 1501 dated 12-11-2016.

(6) «B»

407/PA

OFFICE OF THE
INSPECTOR GENERAL OF POLICE

KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 3512-19 /19, Dated Peshawar the 02/10 /2019.

ORDER

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After going through the relevant record, comments and material on record the Adverse Remarks recorded in his ACR for the period from 01.01.2017 to 12.07.2017 are maintained and his representation is hereby filed.

Attested
Appellant

Sd/-
Dr. Ishtiaq Ahmed, PSP
Addl: IGP/HQrs:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Endst: No. & date even.

Copy of above is forwarded for information and necessary action, to the:-

1. Regional Police Officer, Mardan Region, Mardan w/r to his memo: No. 390/PA/ACR, dated 18.09.2019. Necessary entry into this effect may also be made in his Duplicate Character Roll Dossier. The Representationist may please be informed accordingly.
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3. Office Supdts: "E-II & E-III" Branch, CPO.

PA
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4/10/19

PA-BRANCH
Office of the DIG Police
Mardan Region-I, Mardan
318 /PA/ACR
4-10-2019

(SADIQ BALOCH)PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

(7)

olice No.99

GS&PD,NWFP. 1559 F.S. 500P. of 100-9-12-1990-(62)

POLICE DEPARTMENT

DISTRICT NOWSHERA

No.13-17

Annual Confidential Report on the working of Assistant Sub-Inspector, Sub-Inspectors and Inspectors for the year ending 31st December, 2017.

Name, Provincial or Range No.	SI Behroz Khan No. P/402
Father's Name	Nasrullah Khan
Where and on what duties Employed during the past 12 Months	01.01.2017 to 18.01.2017, Police Lines, 19.01.2017 to 30.03.2017, SHO PS, Nizampur, 31.03.2017 to 08.05.2017, SHO PS, Akora, 09.05.2017 to 12.07.2017, ASHO PS, Pabbi, & then transferred to Inv: Wing.
Class of Superintendent of Police's Report, i.e. "A" "B" or "C"	B
Is he honest?	Yes
Remarks by:- 1. Superintendent of Police, 2. Regional Deputy Inspector General of Police.	Correct Effort Convey as advised. (WAHID MEHMOOD)PSP District Police Officer, Nowshera

بخدمت جناب۔ چیف منسٹر صاحب۔ سروس ٹریبونل پشاور KPK

بذریعہ IGP صاحب KPK۔ بہروز خان بنام۔

درخواست ہمراہ تبدیلی تاریخ پیشی

جناب عالی:۔

معروض خدمت ہوں کہ سائل کا آج تاریخ پیشی تھی۔
لیکن میرا وکیل رضوان اللہ صاحب بیمار ہے۔ پیشی سے لاچار ہے۔
استدعا ہے میرا تاریخ پیشی تبدیل کرنے کا حکم صادر فرمایا جائے۔

درخواست گزار سائل بہروز خان

14/7/2021

KHYBER PAKHTUNKWA
SERVICE TRIBUNAL, PESHAWAR
No. 103 /ST
Dated: 17/01 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of Khyber Pakhtunkhwa
Nowshehra6.

Subject: **JUDGMENT IN APPEAL NO. 1790/2019 MR. BEHROZ KHAN.**

I am directed to forward herewith a certified copy of Judgement dated 24.11.2021 by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR