BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL,PESHAWAR

Appeal No. 1266/2012

Date of Institution ... 19.11.2012

Date of Decision ... 12.06.2018

Miraj Habib IHC No. 81, Hqrs: DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

1. Inspector General of Police/ Provincial Police Officer (PPO) Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar and 03 others. ... (Respondents)

MISS. ROIDA KHAN, Advocate	---	For appellant.
MR.USMAN GHANI, District Attorney	---	For respondents
MR. AHMAD HASSAN,	---	MEMBER(Executive)
MR. MUHAMMAD HAMID MUGHAL	---	MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that adverse remarks for the year 2011 were recorded in the PER of the appellant vide letter dated 12.09.2012. He preferred departmental appeal on 26.09.2012, which was rejected on 10.10.2012 and communicated to him on 01.11.2012, hence, the instant service appeal on 19.11.2012.

ARGUMENTS

3. Learned counsel for the appellant argued that adverse remarks were recorded in his PER for the year 2011 and communicated to him on 01.11.2012. The conditions of prior counseling before recording adverse remarks were not observed by the respondents. They were also not communicated to the appellant in time. Service record of the appellant was generally good and there was nothing adverse against him.

4. Learned District Attorney argued that all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there was no illegality in the said order. The appeal is not maintainable and be dismissed.

CONCLUSION.

5. In the instructions governing writing of PER, it is clearly laid down no adverse entry can be recorded without prior counseling. In the appeal in hand the instructions contained in para 3.7 pertaining to writing of PER were violated by the respondents, as such these remarks had not legal backing.

6. As a sequel to above, the appeal is accepted and the impugned order dated 19.12.2012 is set aside. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
12.06.2018

Order

12.06.2018 Counsel for the appellant, Mr. Usman Ghani, District Attorney alongwith Mr. Gul Zad, ASI for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
12.06.2018

(AHMAD HASSAN)
Member

(MUHAMAMD HAMID MUGHAL)
Member

27.03.2018 Appellant present. Learned counsel for the appellant is absent. Mr. Riaz Ahmed Painda Kheil, Assistant AG alongwith Mr. Wajid Khan, Head Constable for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 20.04.2018 before D.B.

(Muhammad Amin Khan Kundi)
Member

(Muhammad Hamid Mughal)
Member

20.04.2018 Counsel for the appellant and Addl:AG alongwith Mr. Gul Zad, ASI for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.06.2018 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

Order

Service Appeal No. 1266/2012

05.12.2017 Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 03.01.2018 before D.B.

(Ahmad Hassan)
Member (E)

(Muhammad Amin Khan Kundi)
Member (J)

03.01.2018 Appellant in person present. Asst: AG alongwith Mr. Wajid Khan, H.C (CTD) for respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 23.02.2018 before D.B.

(Ahmad Hassan)
Member(E)

(M.Amin Khan Kundi)
Member (J)

23.02.2018 Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Gul Zad, ASI for the respondents present. Representative of the respondents submitted dismissal order of the appellant which is placed on file. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.03.2018 before D.B.

(Ahmad Hassan)
Member(E)

(Gul Zeb Khan)
Member(E)

01.12.2016 None present for the appellant. Assistant AG for respondents present. Notices be issued to the appellant and his counsel. To come up for rejoinder and arguments on 21.03.2017 before D.B.

Member Chairman

21.03.2017 Appellant in person and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 06.07.2017 before D.B.

(AHMAD HASSAN)
MEMBER

20. 06.07.2017 No one present on behalf of appellant. Mr. Zia Ullah, Deputy District Attorney for the respondent present. Notice be issued to the appellant and his counsel for attendance. To come up for arguments on 30.10.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Gul Zeb Khan)
Member

30.10.2017 Appellant with counsel (Roida Khan, Advocate) and submitted Wakalatnama, which is placed on file. Muhammad Jan, DDA for the respondents present. The newly engaged learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 05.12.2017 before the D.B.

Member Chairman

28.10.2015 Appellant in person and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to 7-4-16 for arguments.

Member

07.04.2016 None present for appellant. Mr. Muhammad Jan, GP for respondents present. Due to non-availability of learned counsel for the appellant as well as learned Member (Executive) is on leave therefore, case is adjourned to 29.7.16 for arguments.

Member

29.07.2016 Clerk to counsel for the appellant and Addl: AG for respondents present. Clerk to counsel for the appellant requested for adjournment. To come up for rejoinder and arguments on 12-12-2016.

Member Member

31.10.2014 Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Syed Aamir Abbas, Inspector (Legal) for the respondents present. Due to incomplete Bench, case is adjourned to 24.3.2014 for arguments.

MEMBER

24.3.2015 Counsel for the appellant and Mr. Muhammad Jan, GP with Syed Aamir Abbas, Inspector (Legal) for the respondents present. Counsel for the appellant requested for adjournment. Therefore, case is adjourned to 28.10.2015 for arguments.

MEMBER MEMBER

MEMBER MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1266/2012

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/11/2012	The appeal of Miraj Habib presented today by Mr.Muhammad Usman Turlandi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	27-11-2012	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 15-1-2013. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

In Ref; to S.A No 1266 of 2012.

Miraj Habib IHC No.81.....Versus.....PPO & others.

INDEX

APPELLANT.

(Meraj Habib IHC No.81)

Through:

Muhammad Usman Khan Turlandi
Advocate Peshawar.

Dated; 16/11/2012.

OFFICE: Flate # C-1 Haji Murad Plaza,Dalazak Road, Peshawar City.
Cell# 03005895841

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

In Ref; to S.A No. 1266 of 2012.

K.W.F Provincial Service Tribunal
No. 12551
Dated 19-11-2012

Miraj Habib IHC No.81, Hqrs: DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.....**APPELLANT.**

VERSUS

1) Inspector General of Police / Provincial Police Officer (PPO) Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar.
2) Additional Inspector General of Police, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
3) Deputy Inspector General of Police, DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
4) Superintendent of police, Hqrs: DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.....**RESPONDENTS.**

Registrar
19/11/12

Appeal U/S 4 of the Service Tribunal Act against the final impugned official letter No.4392/PA/DCT dated Peshawar, the 10-10-2012 passed by the respondent No.2 Communicated / received by the appellant on 01-11-2012 whereby the departmental appeal of the appellant was turned down and filed whereas the penalty of adverse remarks recorded by the respondent No.3 in the ACR/PER of the appellant for the year 2011 was up-held.

PRAYERS IN APPEAL:-

On acceptance of this appeal the impugned order dated 10-10-2012 passed by the respondent No.2, communicated to the appellant dated 01-11-2012 may be set-aside and the adverse remarks recorded by the respondent No.3 in the ACR/PER for the year 2011 be expunged in order to secure the ends of justice.

RESPECTFULLY SHEWETH:-

1) That the appellant is performing his duties as IHC No.81, Hqrs: DCT Special Branch (SB) Khyber Pakhtunkhwa Peshawar, with great zeal and enthusiasm.

2) That no adverse remarks whatsoever has ever been conveyed to the appellant from any quarter whereas all his immediate and high officers were extremely satisfied of his hard working, efficiency, integrity, discipline and good cooperation.

3) That the appellant was surprised to get a copy of his ACR for the year 2011 whereas the reporting Officer has given his remarks as "**His working during the period under report remained below average.**", the first countersigning Officer endorsed as: "**Agreed**" and second countersigning Officer endorsed as: **"Seen"**. (Copy of the adverse remarks for the year 2011 is annexure "A").

4) That the appellant while aggrieved of the adverse remarks communicated to the appellant at a very belated stage, preferred departmental representation and tabled the same before the respondent No. 2 in order to expunge the adverse remarks

mentioned above. (Copy of the departmental representation is Annexure as "B").

5) That the respondent No.2 did not bother to requisite the service record of the appellant and to see all the ACRs/ report of the last total period and astonishingly stepped into hot water and with a single stroke of pen filed the departmental appeal vide impugned order dated 10-10-2011, communicated to and received by the appellant on 01-11-2012. (Copy of the impugned letter is annexure as "C").

6) That the appellant in the given circumstances being a civil servant, having no other efficacious remedy, approaches this august Tribunal for setting-aside the impugned order by expunging the adverse remarks recorded in his ACR/PER on the following amongst other grounds inter-alia.

GROUNDS.

a) That the impugned official letter dated 10-10-2012, communicated to / received by the appellant, rejecting the departmental appeal preferred by the appellant is illegal, unlawful, without lawful authority, without jurisdiction, un-constitutional, un-Islamic and against the law on the subject hence not tenable in the eyes of law.

b) That the adverse remarks passed by the respondent No. 2 is based on malafide intention and ulterior motive and use of colorful authority, self-innovation and monopoly, which is to be struck down by this august Tribunal.

c) That during the entire service/professional life, no adverse remarks has ever been passed against the petitioner while the impugned adverse remarks have just been passed on malafide intention and ulterior motive having no relevancy with his service career.

d) That there is no such evidence in the personal file of the petitioner which could legally be considered sufficient to support the impugned adverse remarks given by the Respondent No.3.

e) That the respondents for the reason best known to them have ignored totally the law and instruction contained in the "instructions on performance evaluation report" hence such adverse entries having no legal sanctity.

f) That the performance of the appellant during the years 2011 was up to all standard, during this period neither the appellant was proceeded against on any disciplinary ground nor in this period he was ever served with any charge sheet, show cause notice, explanation or counseling whatsoever, hence the adverse remarks having no base and are liable to be set-aside.

g) That prior to the impugned order and even prior to the adverse remarks communicated to the appellant neither any counseling nor any advisory observation / instruction were conveyed to the appellant which is mandatory one and in absence of such mandatory provision no such remarks should be consider as adverse and even cannot be used for the determination of the appellant to differ him from his due promotion.

h) That the appellant was shocked to get the impugned remarks in his PER for no fault on his part which is a bad stigma on his entire service career thus liable to be expunged.

i) That the instruction on Performance of Evaluation Report (PER) provides; 1.0 "**when should a report be written**:- Para 0.2 the instruction about confidential reports envisages that report on civil servant be initiated in the first week of January each Year by the initiating authority and forwarded to the higher in the same week. The higher authority shall give its remarks within one week so that the report is completed within the month of January each year" while on the other hand the ACR/PER of the appellant for the period of 20111 has been completed in Octber 2012. **Similarly**;

Section: 4(b) (iv) provides "that final authority while sending Annual Confidential Report to the head of the Departmental Authority for record should endorse a copy of covering letter to the officer who has been reported upon so that he could be informed about the completion of his ACR". In contrary thereof the appellant has been kept unaware of his ACR/PER since 2011 till 2012.

j) That section: 3.7 envisages **warning/counseling:-** It has been noted that the requirements of warning/counseling are not being fulfilled before recording adverse remarks in the ACRs of the Government Servants. Resultantly, these are expunged under the order of the KPK Service Tribunal. In order to minimize litigations, the Provincial Government has reviewed the position and has decided that:-

a. Counseling may be ensured in all cases before initiating an adverse report or grading the ACR;
b. The officers who give adverse remarks without any solid grounds shall be personally held responsible for deviation from rules.

k) That since 2011 till 2012, the appellant has neither been warned nor any counseling has so far been made and thus he has been deprived of his valuable rights.

l) That section 0.5 of the Instruction on PER further reveals: **Instructions for the countersigning officers**:-

The countersigning officer should weigh the remarks of the reporting officer against his personal knowledge of the officer being reported upon, compare him with other officers of the same grade working under different reporting officers but under the same countersigning officer and then give his overall assessments in part-VI and remarks in part-VII.

m)That the appellant has already put a long tenure of service for more than two decades and has not been given any adverse remarks throughout in his professional life except the one in question and as such the impugned remarks are open for interference and liable to be expunged.

n) That further submission will be advanced at the time of hearing the appellant at the bar.

It is therefore humbly prayed that the impugned order/letter dated 10-10-2012 passed by the respondent No. 2 may be set-

aside and the adverse remarks recorded by the respondentNo.3 in the ACR/PER of the appellant be expunged and the appellant be exonerated form the baseless charges leveled against him and or other remedy if available in the circumstances of the case which has not specifically been prayed for, may also be extended in favor of the appellant to meet the ends of justice.

Appellant

(Miraj Habib No.81/IHC)

HQrs/DCT/SB KPK Peshawar.

Through

Muhammad Usman Khan Turlandi

Dated 16-11-2012. Advocate Peshawar.

Note:-

1) No such like appeal has ever been filed in any Tribunal or any competent court of Law as per instruction of the Appellant.
2) Six Separate copies complete in all respect/aspect are enclosed herewith.
3) Memo of addresses have already been given in the heading of the appeal, which are sufficient for service.

Appellant

(Miraj Habib No.81/IHC)

HQrs/DCT/SB KPK Peshawar.

Through

Muhammad Usman Khan Turlandi

Dated: 16-11-2012. Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

In Ref; to S.A No _____ of 2012.

Miraj Habib IHC No.81.....Versus.....PPO & others.

AFFIDAVIT.

I, Miraj Habib No.81/IHC HQrs/DCT/SB KPK Peshawar, the appellant, do hereby solemnly affirm and declare on oath that the contents of the accompanying Service appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret or concealed from this august Tribunal.

DEPONENT.

KHALID MAHMOOD ADVOCATE ★ PESHAWAR HIGH COURT ★ OATH COMMISSIONER

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

In Ref; to S.A No. _____ of 2012.

Miraj Habib IHC No.81, Hqrs: DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.....**APPELLANT.**

VERSUS

5) Inspector General of Police / Provincial Police Officer (PPO) Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar.
6) Additional Inspector General of Police, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
7) Deputy Inspector General of Police, DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
8) Superintendent of police, Hqrs: DCT Special Branch (SB) Khyber Pakhtunkhwa, Peshawar .....**RESPONDENTS.**

APPELLANT.
(Meraj Habib IHC No.81)

Through:

Muhammad Usman Khan Turlandi
Advocate Peshawar.

Dated; 16/11/2012.

(11) (108)

ANNEXURE A

Confidential.
Phone No.091-9216748-49
Fax No.091-9216531

From The Deputy Inspector General of Police,
DCT, SB, Khyber Pakhtunkhwa,
Peshawar.

To The Regional Criminal Intelligence Officer,
Mardan.

No. 3977 /PA/DCT, Dated Peshawar, the 12/ 9/2012.

Subject: ACR/COMMUNICATION OF ADVERSE REMARKS.

Memo:

In the Annual Confidential Report on the working of I H.C Meraj Habib of DCIO Staff Mardan for the period 01-01-2011 to 31-12-2011 it has been mentioned that:-

Remarks of Reporting Officer.
(Mr. Shah Ali Kayani, SSP/Admin DCT,SB)

Remarks:-

"His working during the period under report remained below average"

1st countersigning Officer Remarks.
(Dr. Ishtiaq Ahmed, DIG/DCT,SB)

"Agreed"

2nd Countersigning Officer
(Mr. Syed Akhtar Ali Shah AddI: IGP Special Branch

"Seen"

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.

12/09

(SHAH ALI KAYANI)
SSP Admin /DCT
For Deputy Inspector General of Police,
DCT, SB Khyber Pakhtunkhwa,
Peshawar.

(12) ANNEXURE- B

BEFORE THE HONORABLE ADDL: INSPECTOR GENERAL OF POLICE SPECIAL BRANCH KHYBER PHUTOON KHAWA PESHAWAR

THROUGH: **PROPER CHANNEL**

PRAYERS:- Request for expunction of adverse remarks in the A.C.R the Period from 1-1-2011 to 31-12-2011.

Respectable Sir,

With profound regards it is humbly submitted that I have been given "adverse report" in the ACR for the period from 01-01-2011 to 31-12-2011 as fallow:-

"His working during the period under report remained below average"

In this respect humble submissions as fallow:-

1. I have been serving in police force since 1994 and am doing my duties according to the satisfaction of my superiors
2. I have been serving in DCT SB with effect from 01-06-2010 and an performing my duties accordingly.
3. That it is for the 1st time that I have been given such "adverse remark".
4. That prior to this I have been given "A" report in my Annual confidential reports, which are placed in my service dossier.
5. That in this respect my seniors may give their observation with regard to my performance.

In view of the above facts and circumstance my adverse remarks may very kindly be expunged. I shall further improve my performance. I shall ever be grateful for your this act of kindness.

ATTESTED TO BE TRUE COPY
M. Usman Khan Turlandi
M. A. LL. B Advocate
Peshawar.

Your most
Obediently

26/9/12

(Miraj Habib No 81/IHC)
HQrs/DCT SB KPK Peshawar.

(13) ANNEXURE C

From The Superintendent of Police,
DCT, SB: Khyber Pakhtunkhwa,
Peshawar.

To The Deputy Superintendent of Police,
Hqrs: DCT SB: Khyber Pakhtunkhwa,
Peshawar.

No. 4392 /PA/DCT Dated Peshawar the 10-10 /2012.

Subject: **REPRESENTATION.**

Memo:

Please refer to Addl: I.G Special Branch Khyber Pakhtunkhwa Peshawar Endst: No. 489/PA dated 09-10-2012.

The Representation of IHC Miraj Habib No.81of DCT HQrs: has been considered by the Addl: IGP Special Branch Khyber Pakhtunkhwa and filed.

He may be informed accordingly.

(SHAH ALI KIYANI)
Senior Superintendent of Police, Admin:
DCT, SB: Khyber Pakhtunkhwa,
Peshawar.

Recived
MIRAJ HABIB No 81
DCT
1/11/012

ATTESTED TO BE TRUE COPY
M. Usman Khan Turlandi
M. A. LL. B Advocate
Peshawar.

بعدالت خیبر پختونخوا سروس ٹریبونل پشاور

سنہ پنجاب اپیلانٹ S. Appeal No. ____ 1292

بنام PPO وغیرہ

مقدمہ

دعویٰ معراج حبیب

جرم ولد حبیب گل ساکن صوابی

باعث تحریر آنکہ اپیلانٹ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کارروائی متعلقہ آن مقام KPK-ST کے لئے

Mr Usman Khan Turlandi
M. A. LL. B Advocate
Peshawar

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زر ہائے پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم قنبرہ ماہ نومبر 2012

العبد گواہ شد العبد

ATTESTED
&
ACCEPTED

بمقام PK-S.T. کے لئے منظور ہے۔

معراج حبیب
اپیلانٹ

Advocate
محمد عثمان خان ترلاندی
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1266/2012

Miraj Habib IHC No. 81, Hqrs: DCT, Special Branch (SB),

Khyber Pakhtunkhwa, Peshawar ..... **(APPELLANT)**

VERSUS

1. Provincial Police Officer (PPO)Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar
2. Additional Inspector General of Police, Special Branch (SB), Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Inspector General of Police DCT, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police Head Quarter DCT, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar. .... **(RESPONDENTS)**

REPLY ON BEHALF OF RESPONDENTS

Preliminary Objections

01. That the appellant has not come with clean hands to this honorable tribunal.
02. That the appellant has no cause of action and locus standi to file the present appeal.
03. That appeal in the present form is legally defective.
04. That the appeal is time barred.
05. That the appellant has concealed the material facts from this honorable tribunal.
06. That the appeal is bad due to non joinder of necessary parties.
07. That the appellant is estopped by his own conduct, to file the present appeal.

FACTS:

01. Correct to the extent that the appellant was performing his duty in DCT, SB: but the senior and superior officers were not satisfied with his performance. During the year 2011, the appellant neither submitted any source report, analysis report, nor updated the profiles of militants/suspects entrusted to him.
02. Incorrect. Adverse remarks were recorded in the PER of the appellant for the year 2011 and the same were communicated to him. Moreover, his superior officers were not satisfied from the work of appellant.
03. In reply to para No.3 it is submitted that adverse remarks were recorded in the PER of appellant as his performance were assessed poor.
04. Correct to the extent that the appellant preferred departmental representation for expunction of impugned remarks and his representation was filed, as there was no force in his representation.
05. Incorrect. The criteria of assessment varies between the reporting officers.
06. Incorect.the impugned order is based on facts and the appellant has no right to challenge the same before this honorable tribunal and his appeal is liable to be dismissed on the following grounds.

GROUNDS:

a) Incorrect. The competent authority has exercised his legal powers to reject the departmental appeal because the performance of the appellant during the year 2011 were found unsatisfactory. Annual Confidential Report as per rules is meant to assess the performance of a government official. The reporting and countersigning officer after assessing and analyzing the performance of an official under his/her command evaluate the performance of subordinating staff/officer.
b) Incorrect. The adverse remarks awarded to the appellant in the PER of year 2011 were based on his poor performance.
c) Incorrect. The senior and superior officers were not satisfied with his performance. During the year, 2011 the appellant neither submitted any source report, analysis report, nor updated the profiles of militants/suspects entrusted to him.
d) Incorrect, the impugned remarks were based on his poor performance.
e) Incorrect. Respondent acted in accordance with law and rules.
f) Incorrect. As mentioned in facts of Para No. 01, the appellant failed to submit any source report, analysis report or update the profiles of militants. He was directed time and again by his superior officers to improve his performance, but in vain.
g) Incorrect. The appellant was several times directed for improving his performance but the appellant took no interest in his official duties.

h) Incorrect. It was all because of his poor performance.

i) Detail reply is given in above paras.

j) In reply to this para it is submitted that the reporting and countersigning officers fulfilled all the formalities while assessing the performance of appellant.

k) Incorrect. The appellant was several times verbally warned for improving his performance but in vain.

l) This para is related to record and instruction for countersigning officer hence no comments.

m) Incorrect. This Para has already been explained in previous paras.

n) That the respondents also seek permission to raise additional grounds at the time of hearing of the appeal.

Prayers:

It is therefore, humbly prayed that keeping in view of aforementioned submissions, the subject appeal of appellant devoid of merit and legal footing may graciously be dismissed with cost.

Provincial Police Officer
Khyber Pakhtunkhwa,
Peshawar
(RESPONDENT No. 1)

Addl: Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 2)

Deputy Inspector General of Police
CTD, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 3)

Superintendent of Police, Hqrs:
CTD, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 4)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1266/2012

Miraj Habib IHC No. 81, Hqrs: DCT, Special Branch (SB),

Khyber Pakhtunkhwa, Peshawar..... **(APPELLANT)**

VERSUS

1. Provincial Police Officer (PPO)Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar
2. Additional Inspector General of Police, Special Branch (SB), Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Inspector General of Police DCT, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police Head Quarter DCT, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.

..... **(RESPONDENTS)**

AFFIDAVIT

We the deponents in the above titled service appeal, do here by solemnly affirm and declare on oath that the contents of Para wise comments/reply are correct and true to the best of our knowledge and belief and nothing have been kept concealed from this honorable tribunal.

Provincial Police Officer
Khyber Pakhtunkhwa,
Peshawar
(RESPONDENT No. 1)

3/1/2014

Addl: Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(RESPONDENT No. 2)

Deputy Inspector General of Police
CTD, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 3)

Superintendent of Police, Hqrs:
CTD, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 4)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1266/2012

Miraj Habib IHC No. 81, Hqrs: DCT, Special Branch (SB),

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VERSUS

1. Provincial Police Officer (PPO)Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar
2. Additional Inspector General of Police, Special Branch (SB), Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Inspector General of Police DCT, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police Head Quarter DCT, Special Branch (SB) Khyber Pakhtunkhwa, Peshawar.

..... **(RESPONDENTS)**

AUTHORITY LETTER

Syed Aamir Abbas, Sub Inspector Legal, CTD, Khyber Pakhtunkhwa, Peshawar is hereby authorized to appear on behalf of the Respondents before the Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar. He is also authorized to submit all required documents and replies etc. pertaining to the appeal through the government pleader.

Provincial Police Officer
Khyber Pakhtunkhwa,
Peshawar
(RESPONDENT No. 1)

3/1/2014

Addl: Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar.
(RESPONDENT No. 2)

Deputy Inspector General of Police
CTD, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 3)

Superintendent of Police, Hqrs:
CTD, Khyber Pakhtunkhwa,
Peshawar.
(RESPONDENT No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

In Ref; to S.A No. 1266/ of 2012.

Miraj Habib IHC No.81.....Versus.....PPO & others.

REJOINDER ON BEHALF OF THE APPELLANT.

REPLY TO THE PRELIMINARY OBJECTIONS:-

1) Incorrect. The appellant with his clean hands had approached this august Tribunal.
2) Incorrect. The Appellant has proper cause of action and locus standi while filing the instant appeal.
3) Incorrect. The appeal of the appellant U/S 4 of the Service Tribunal Act is fully exhaustive and within the ambit of the terms and condition of service, this august Tribunal has the exclusive jurisdiction.
4) Incorrect. The Appeal in hand is well within time.
5) Incorrect. No facts whatsoever have ever been concealed from this august tribunal.
6) Incorrect. All the necessary parties have been arrayed as parties therein.
7) Incorrect. No role of estoppels is applicable to the appellant.

FACTS :-

1) Incorrect. The allegations leveled against the appellant are totally misconceived and ambiguous. Had there any allegation against the appellant, he would have been served with a show cause notice.
2) Incorrect. Prior to 2011, no adverse remarks have ever been passed against the appellant and prior to the adverse remarks no advisory remarks has ever been communicated to the appellant. As for as satisfaction of the

superiors or his colleagues is concerned, there is no such scale to evaluate the satisfaction of the high Ups but the moment when warning, counseling or show cause notice is issued to civil servant then it will be presumed that the performances are not satisfactory.

3) Incorrect. Detailed reply has been given in Para- 2 above.
4) Incorrect. The departmental representation has been filed with a single stroke of pen without applying legal wisdom which is against the cannon of law.
5) Incorrect. The comments so passed is ambiguous and against the law on the subject.
6) Incorrect. The impugned order is a void one, based on malafide intention having no legal force and the appellant has the constitutional right to challenge such illegal, unlawful and order without lawful authority.

GROUNDS:-

a) Incorrect. The respondents while deciding the fate of the appellant has not bothered to see whether any such warning, counseling or advisory remarks has ever been passed prior to the adverse remarks and as such they have stepped into error and exercised their power arbitrarily and illegally.
b) Incorrect. Detailed reply has been given in Para- a above.
c) Incorrect. Detailed reply has been given in Para- 1 above.
d) Detailed reply has been given in Para- 2 above.
e) Incorrect. Detailed reply has been given in Para- a above.
f) Detailed reply has been given in Para- 1 above.
g) Incorrect. No such direction, instruction, warning, counseling or advisory note has ever been passed against the appellant. Had the respondents fulfilled such pre-requisite conditions, they must have annexed with their comments.
h) Incorrect. Detailed reply has been given in Para- 2 above.
i) Incorrect. Detailed reply has been given in Para- 2 above.
j) Incorrect. Detailed reply has been given in Para- a above.
k) Incorrect. Detailed reply has been given in Para- g above.
l) This Para is admitted, hence no need to reply.

m) Incorrect. Detailed reply has been given above.

n) Para- n is legal.

It is therefore humbly prayed that the comments submitted by the respondents be set at naught and the appeal of the appellant may graciously be accepted by redressing his grievances as prayed for in the appeal.

APPELLANT.

Through

Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated 01/04/2014

AFFIDAVIT.

I, Miraj Habib No.81/IHC HQrs/DCT/SB KPK Peshawar, the appellant, do hereby solemnly affirm and declare on oath that contents of the accompanying Rejoinder on behalf of the appellant are true and correct to the best of my knowledge and belief and nothing has been kept secret or concealed therein.

IDENTIFIED BY:

Muhammad Usman Khan
Turlandi
Advocate Peshawar

DEPONENT

ATTESTED
08-5-2014
Mian Sibghat Ullah Shah
Advocate
Notary Public/Oath Commissioner
High Court Peshawar

بعدالت

مورخہ 2017ء منجانب

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کیلئے

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 وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ 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 ونظر ثانی وپیروی کرنے کا مختار 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 30 ماہ اکتوبر 2017ء

العبد گواہ العبد

مقام کے لئے منظور ہے۔

عدنان سٹیشنری مارٹ
چوک مشنگری پشاور سٹی فون: 2220193
Mob: 0345-9223239

Before the court of Service Tribunal KPK Peshawar

Miraj Habib V/S Govt (ACR)

Application for date Adjournment due to absence of Counsel.

Respectfully Sheweth,

(i) That the above title case is pending before the Court which is fixed for today i.e 23.2.18.

(ii) That my counsel is not present today.

Kindly adjourn the case for today.

Petitioner
Miraj Habib

Date: 23.2.18

(18) Ann "F"

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1207/2014

Date of institution ... 01.10.2014
Date of judgment ... 02.11.2017

Miraj Habib S/o Habib Gul
R/o Mughal Kot, District Swabi
Ex-I.H.C Police Department Mardan. ... (Appellant)

VERSUS

1. Government of KPK through Secretary Home, Civil Secretariat, Peshawar.
2. Deputy Inspector General of Police Mardan.
3. District Police Officer, Mardan. ... (Respondents).

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 15.08.2014 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE AND ORDER DATED 12.09.2014 OF RESPONDENT NO. 2 WHEREBY DEPARTMENTAL APPEAL OF APPELLANT WAS DISMISSED WHICH ARE ILLEGAL AGAINST THE LAW AND FACTS.

Mr. Amjad Ali .. For appellant.
Mr. Kabirullah Khattak, Additional Advocate General .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. MUHAMMAD HAMID MUGHAL .. MEMBER (JUDICIAL)

ATTESTED

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER:- This appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 15.08.2014 passed by District Police Officer Mardan whereby he dismissed the appellant from service on the allegation that FIR No. 646 dated 23.06.2014 under sections3/4 PO/15AA Police Station City, Mardan was registered again him and in the departmental proceedings the appellant

authority has rightly dismissed the appellant from service and prayed for dismissal of appeal.

4. Perusal of the record reveals that the appellant was serving in Police Department since 25.03.1994 and during service he was involved in a criminal case vide FIR No. 646 dated 23.06.2014 under sections3/4 PO/15AA Police Station City, Mardan. The record further reveals that on the basis of said FIR a departmental proceeding was initiated against the appellant but neither charge sheet was framed nor the same is available on record. Furthermore the inquiry officer has recorded the statement of the witnesses in the inquiry proceedings and it has also been mentioned in para-2 of inquiry report that he has recorded the statement of investigation officer as well as eye witnesses but neither the appellant was provided opportunity of cross examination nor defence nor he was provided opportunity of personal hearing. Furthermore the record reveals that the appellant has submitted reply to show cause notice dated 22.05.2014 and 25.06.2014 where as the inquiry report was finalized on 17.07.2014 which also shows that the show cause notice was issued to the appellant before finalizing the inquiry report by the inquiry officer which also rendered the whole proceedings illegal vide ab-initio. Therefore, we are constrained to accept the appeal set-aside the impugned order and reinstate the appellant in service. However, the department is at liberty to conduct a proper de-novo inquiry in the mode and manner prescribed by law within four months from the receipt of this judgment and in case of de-novo inquiry the issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.11.2017

SD/-
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

SD/-
(MUHAMMAD HAMID MUGHAL)
MEMBER

Certified to be true copy
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Date of Presentation of Application 29-11-17
Number of Words 1200
Copying Fee 8/-
Urgent 0/-
Total 8/-
Name of Copyist
Date of Completion 30-11-17
Date of Delivery of Copy 30-11-17

ACR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 966/2012

Date of Institution ... 29.08.2012

Date of Decision ... 27.10.2017

Umar Daraz Khan, DSP Special Branch, Khyber Pakhtunkhwa, Peshawar.
... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.
... (Respondents)

MR. MUHAMMAD ASIF YOUSAFZAI, Advocate ... For appellant

MR. USMAN GHANI, District Attorney, ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASAN, ... MEMBER

ATTESTED

EXAMINER
Khyber Pakhtunkhwa Service Tribunal, Peshawar

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was communicated adverse remarks for the period from 01.01.2011 to 01.08.2011, on 10.04.2012, against which he filed departmental representation on 08.05.2012, which was not responded to and thereafter, the present service appeal on 29.08.2012.

ARGUMENTS.

3. The learned counsel for the appellant argued that the adverse entry for the period from 01.01.2011 to 01.08.2011 were given to the appellant without any counseling, warning, advice or complaint, hence the remarks cannot be sustained.

4. On the other hand, the learned District Attorney argued that the appellant was given counseling but record was not attached with the comments as is clear from ground-B of the comments of the respondents.

CONCLUSION.

5. The perusal of order sheet dated 06.12.2016 shows that the representative of the respondents was directed to produce all the relevant record. On 24.07.2017, last opportunity was given to the respondents to produce all relevant record but he failed to produce the same. Today, the departmental representative also states that there is no such record. The instructions on the Performance Evaluation Report clearly lay down that no adverse entry can be given unless the civil servant is counseled, advised or warned but there is nothing in black and white in this regard. Mere comments of the respondents cannot be believed in this regard.

6. Resultantly, this appeal is accepted and the adverse remarks for the period from 01.01.2011 to 01.08.2011 are expunged. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(AHMAD HASAN)
MEMBER

Certified to be ture copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED
27.10.2017

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 1302 /ST Dated 28 /06/2018

To

The Additional Inspector General of Police,
Special Brnach (SB) Khyber Pakhtunkhwa,
Peshawar.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 1266/2012, MR. MIRAJ HABIB.**

I am directed to forward herewith a certified copy of Judgment/Order dated 12/06/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

(B)

POLICE DEPARTMENT 2348 MARDAN DISTRICT

Allegation: Abuse of Inp/Legal

ORDER

This order will dispose off inquiry against **IHC Mairaj Habib No. 2348**, while posted as Gard Commander of Investigation Bureau, Mardan committed the following act, which is are grass misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That **IHC Mairaj Habib No. 2348**, while posted as Gard Commander of Investigation Bureau, Mardan, ASI Taimur Khan PS City recovered 12 bottles wine, one Pistol 30 bore with 20 rounds, one Motorcycle and amount of Rs 3000/-selling amount of wine from his possession and registered case vide FIR No: 646 dated 23.06.2014 u/s 3/4 PO/15AA Ps City against him.

In this connection, **IHC Mairaj Habib No. 2348**, was served Final Show Cause vide Investigation office No. 125/PA, dated 22.07.2014 and he was also proceeded against departmentally through **Mr: Shahid Ahmad Khan SP/Investigation Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 135/Inv: dated 08.08.2014,as the allegation has been established against him.

After going through Inquiry file the undersigned agree with the findings of enquiry officer and the alleged **IHC Mairaj Habib No. 2348**, is hereby **dismissed** from service, in exercise of the power vested in me under the Police rules 1975.

Order announced
O.B No. 1727
Dated 15 / 8 /2014

(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 8492-8505 / R dated Mardan the 18-8 /2014

Copy for information and necessary action to:

1. The Deputy Inspector General of Police Mardan Region-I, Mardan
2. The S.P Investigation Mardan.
3. The S.P Operations, Mardan.
4. The DSP/HQrs Mardan.
5. The Pay Officer (DPO) Mardan.
6. The E.C (DPO) Mardan
7. The OASI (DPO) Mardan.