

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.7118/2021

Date of Institution	...	29.07.2021
Date of Decision	...	12.04.2023

Asif Ullah, Sub Inspector No. P/421, Police Lines, Mardan.

... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and three others.

... (Respondents)

Tariq Khan Hoti,
Advocate

... For appellant.

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

Mrs. Rozina Rehman
Miss. Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant's case in brief is that adverse remarks were communicated to him from his Performance Evaluation Report for the period from 01.01.2020 to 27.08.2020. 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 Tariq Khan Hoti Advocate learned counsel for appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.



3. Tariq Khan Hoti 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. He submitted that neither any warning was given to the appellant nor any disciplinary action was initiated against him 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.

4. Conversely, learned DDA submitted that the incident reported vide case FIR No.67/2020 is correct, wherein, one Constable namely Gohar Ali embraced Shahadat. He submitted that the incident occurred due to bad policing of the appellant on account of which he was proceeded against departmentally and was awarded major punishment after fulfillment of all codal formalities. Lastly, he submitted that the adverse remarks recorded in the ACR for the period from 01.01.2020 to 27.08.2020 are well founded and based on facts while the instant appeal is groundless and liable to be dismissed.

5. From the record it is evident that appellant was serving as Station House Officer Police Station Yar Hussain, District Swabi. On the receipt of credible information he made departure alongwith two constables and


also got information from ASI Tariq Mehmood who alongwith two constables was already on Gusht and later on joined them. The allegations against the appellant are that while posted as SHO, he held Nakabandi at midnight without bringing into the notice of any supervisory officer and without credible information which led to the death of Constable Pir Gohar No.317 and in this regard, FIR No.67 dated 12.02.2020 was registered at Police Station Yar Hussain U/S 302/353/427 PPC/7ATA. He was punished for the said act and major punishment of dismissal was awarded to him, however the appellate authority converted his major punishment into minor punishment of withholding increments for two years with cumulative effect. It was noticed that the appellant was awarded adverse remarks for the same incident for the period from 01.01.2020 to 27.08.2020. 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 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.



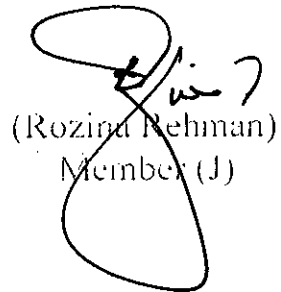
6. For the reasons mentioned above, we are of the opinion that the adverse remarks in this case have been recorded in disregard of the relevant instructions. These are accordingly expunged from the appellant's Performance Evaluation Report in acceptance of the instant appeal. There will be no order as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

ANNOUNCED.

12.04.2023



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

Mutazem Shah