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Abottabad.

BEFORE THE HONOURABLE KHYBER PAKHTOONKHWASERVICE TRIBUNAL

PESHAWAR

Dr. Javeria Haroon (Ph.D.), Assistant Professor of Chemistry (BPS-18), Govt. Girls Post Graduate College (GGPGC) No. 1, Haripur.

.....Appellant

VERSUS

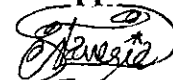
1-Honourable Secretary Higher Education, Khyber Pakhtoonkhwa, Civil Secretariat, Peshawar.

2- Honourable Director of Higher Education and Controlling officer of ACRs/PERs, Department of Higher Education (Colleges), Khyber Pakhtoonkhwa, Peshawar.

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Appellant (by self)



Dr. Javeria Haroon (Ph.D.),
Assistant Prof. of Chemistry (BPS-18),
Govt. Girls Post Graduate College,
Haripur.

Dated: 22-06-2023

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BEFORE THE HONOURABLE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 727/2023

**Khyber Pakhtukhwa
Service Tribunal**

**Dr. Javeria Haroon, Assistant Professor of Chemistry (BPS-18), Govt. Girls Post-Graduate
College (GGPGC) No. 1, Haripur.**

6201
Date 26/6/2023

.....Appellant

VERSUS

1-Honourable Secretary Higher Education, Khyber Pakhtoonkhwa, Civil Secretariat, Peshawar.

2-Honourable Director of Higher Education and Controlling officer of ACRs/PERS, Department of Higher Education (Colleges), Khyber Pakhtoonkhwa, Peshawar.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS BY ILLEGAL AND UNLAWFUL ADVERSE REMARKS RECORDED IN THE ACRS/PERS OF THE APPELLANT FOR THE YEAR 2017, 2020, 2021 AND AGAINST NO ACTION TAKEN AFTER 120 DAYS ON THE DEPARTMENTAL APPEALS OF APPELLANT UPTO THE EXTENT OF UPGRADATION AND EXPUNCTION OF ADVERSE REMARKS RECORDED IN THE ACRS/PERS OF THE APPELLANT FOR THE YEAR 2017, 2020, 2021 AND 2022

PRAYER

Being aggrieved and dissatisfied with non-compliance of rules and regulations and no response of Appellant's all departmental appeals after passing 120 days except verbal assertion related to up gradation and expunction of ACRs/PERS (2017, 2020, 2021 and 2022), the Appellant prefers her appeal with most humble prayer that this Honourable Khyber Pakhtoonkhwa Service Tribunal may be pleased to;

1-Set aside and declare all related impugned actions including impugned decisions and notifications as illegal, mala`fide, unconstitutional, devoid of merit, and against the verdict of legal, therefore, ineffective upon right of Appellant's promotion in BPS-19 among peers.

2-Direct the respondents not to consider no-communicated ACRs/PERS (belated, missing, average, below average and adverse (devoid of related prior counseling by reporting officers and related prior personal hearing by countersigning officers)) in prescribed time period based on mala`fide, not done on part of Appellant, and against the guidelines as provided by the relevant ACRs/PERS rules, therefore, cannot be utilized for her prejudice, instead prone to expunge and upgrade with all consequential and back benefits..

3-Grant compensation for all grievances, unfairness and mishandling Appellant's all departmental appeals as Appellant's suffering by hands of senior peers with no written response on sympathetic basis opened a gate for unauthorized continuous sufferings of juniors by hands of seniors whereas all impugned notifications are to be set aside following rules and regulations in the best interest of justice.

5-Grant any other equitable remedy as well as relief in which Appellant may deem fit and proper under the described facts and grounds.

9-Set all factual evidences as open proof to be accepted during proceedings, if needed.

10-Direct the respondents (1 and 2) to provide related departmental notifications, if needed.

Dated: 22-06-2023

MAY IT PLEASE YOUR HONOUR,

ON FACTS:

1-That abridgely, the facts giving rise in the instant appeal/petition are that the Appellant is highly qualified, a law abiding and taxpaying citizen of Pakistan and has a good antecedents in her credit.

2-That after getting onto the rolls of prestigious Higher Education Department (HED, KPK) in the year 2009, the Appellant has pulled day and night to render her best in the service of the department with utmost zest and professional gusto initially as Lecturer (BPS-17) dated 13-04-2009 and then, as Assistant Professor on her promotion dated 14-07-2017 after PSB meeting dated 24-03-2017, which is crystal evident from the Appellant's long-stretched service period with unblemished service record (copy of Appointment order here as Annexure "A").

3-That the Appellant has always upheld the professional confidence by her believe in serving and commitment with the vision of home department while reverence from the people of interaction and general public along with marvelous record and successful evaluation for more than decade, by not only performing duties consigned at start of each session, but, also duties assigned during whole year from time to time either verbally or in written.

4- That in the given circumstances whereby adverse remarks were introduced in Appellant's missing and later relegated ACRs/PERs for the year (2017, 2020, 2021) with belated communication to Appellant (Copy of impugned adverse remarks in related departmental letters here as Annexure "B"), while, Appellant got verbal assurance with no written communication about pending decisions from departmental side after her timely written requests (Copy of related departmental expunge appeals here as Annexure "C") for expunge of adverse remarks and up gradation for which neither the Appellant's prior appearance was sought for prior explanation related to introduced adverse remarks and prior counseling with written order at specific date and time by reporting officers (Prof. (retd.) Nasira Bano and Prof. Nighat Shaheen), prior personal hearing with written order at specific date and time by countersigning officers (Prof. (retd.) Subhanullah and Prof. (retd.) Zahoor Ul Haq), nor any findings or material evidence in support of related adverse remarks were recorded in the belated communicated ACRs/PERs (2017, 2020, 2021) from which the Appellant could have drawn his analogies of what went wrong on her part. But, presumptions were named as conclusions in the Appellant's said ACRs/PERs.

5-That an order or notification regarding any of Appellant's departmental appeal had issued in written on 03-02-2022, it was served on 02-06-2023 and received by Appellant on 06-06 2023 after several requests and notification with no compliance with rules and regulations, may deem struck off and set aside.

6-That feeling aggrieved from the acts of the Respondents having no other efficacious remedy available elsewhere and forum to be addressed at, the Appellant approaches this Honourable Tribunals Inter alia upon the following grounds.

GROUNDS

1-That it is settled proposition of law that subject to its power and authority, the preparation, process, communication, and presentation of Appellant's ACRs/PERs (2017, 2020, 2021) in prescribed time following rules and regulations as confidential document is the function of concerned reporting officer and department, and not the civil servant, and department has to provide the complete set of ACRs/PERs of the concerned officer to the PSB well in advance with no impugned and pending decisions regarding up gradation and expunge of said ACRs/PERs following ACR/PER rules to be placed in Appellant's character dossier in prescribed time for completion of whole process.

2-That it is settled rule of law that whilst any "adverse remarks" are being added or holds the chance of being added to the one's ACR/PER, the person shall be intimated mandatorily with a Warning Letter or Counseling on the subject in prescribed time as per settled dictum on the subject, but, in the case of Appellant, unbothered from the situation, the department did not communicate the same to the Appellant even her ACRs/PERs (2017 (graded below average by reporting officer (Prof. (retd.) Nasira Bano)), 2020 (graded average by reporting officer (Prof. Nighat Shaheen)), 2021 (graded average by countersigning officer (Prof. (retd.) Zahoor Ul Haq)) were recorded after preparation by reporting officers without related prior counseling with written order and explanations with written order related to introduced adverse remarks in prescribed time as well as countersigned by countersigning officers after their retirement without related prior personal hearing with written order in prescribed time, and consigned to record room for character dossier by Additional Director (ACR/PER), which is clear violation of article 19A of constitution of Pakistan.

3- That after furnishing above bench mark ACRs/PERs prior in 2012, 2014, 2015, 2016 practical sessions with resultant previous promotion in 2017 in BPS-18, the pre-missing below average ACR/PER (2017) with intensive personal adverse remarks was furnished belated after retirement during COVID-19 online session (2020) with non compliance of rules for prior counseling by same reporting officer (Prof. (retd.) Nasira Bano) as well as real x-mother in law (mumani saas) as revenge after Civil suit by in laws stating false claim of divorce (2019) and settled legal separation via Union Council by their side in 2020 and family suit by Appellant.

4-That after furnishing "Very Good" ACR/PER prior in 2019 practical session, the pre-missing average ACR/PER (2020) and ACR/PER (2021) with intensive personal adverse remarks during COVID-19 online session, were furnished with non compliance of ACR/PER rules related to prior counseling by same reporting officer (Prof. Nighat Shaheen) after her departmental explanation about timely furnishing missing ACRs/PERs (2017, 2020) as personal grudge to Appellant despite her continuous request for processing ACRs/PERs (2017, 2020) during COVID-19 online session.

5-That one reporting officer (Prof. (retd.) Nasira Bano) was retired at the time of furnishing adverse remarks in pre-missing below average ACR/PER (2017) after appellant got referred by on-chair respected Principal (Prof. Nighat Shaheen) with non cooperation while rejecting request of Appellant to furnish same ACR/PER (2017) on humanity basis on back ground of two court cases with in laws. Additionally, countersigning officer was also retired at the time of introducing intensive personal adverse remarks in ACRs/PERs without prior counseling with written order in prescribed time.

6-That Appellant got immediate clearance by respected acting Director (Prof. Muhammad Rose) as inquiry officer in departmental facts-finding inquiry held in July, 2017 soon after her promotion in BPS-18 (14-07-2017) at the end of her maternity leave as a result of false

accusations based on malice in mind by reporting officer (Prof. (retd.) Nasira Bano; x-mother in law) of non-performance of non-communicated one day BS examination duty as well as timely informed and non-continuous more than two casual leaves in the month of January, 2017 due to unavoidable circumstances (continuous physical beating by in laws in expectant condition with already one minor kid (1 and half year) at that time resultant non-cooperation of reporting officer for hospital visits even in break along with previous related medical leave of 15 days at end of 2016. Moreover, availed yearly casual leaves by Appellant did not exceed than allowed in any year in whole service.

7-That Appellant faced biasness and malice by both reporting officers (Prof. (retd.) Nasira Bano and Prof. Nighat Shaheen) from time to time regarding internal selection for further external processing for awards such as "Best Teacher" and open departmental training opportunities while setting aside her applications and discouraging as head of institution in addition to set false grounds against Appellant from time to time such as their attempts of negative encoding of students from time to time.

8-That the affliction to Appellant was conducted by countersigning officer Prof. (retd.) Zahoor Ul Haq) even after his retirement with non-compliance of prior counseling rules as associate of x-in laws belonging to same inhabitant with common interest of destruction of Appellant's career under influential revenge of Appellant's x-in laws as background which could not be ignored. Moreover, respective Controlling officer of ACRs/PERs had not properly conducted official roles in time. Therefore, mala'fide as 'malice in mind' as well as 'malice in law' along with unfairness and biasness are strong elements in mishandling Appellant's case with no written response towards all Appellant's departmental appeals despite verbal positive responses, leading destruction of dignity and career with resultant grievance of Appellant and related social impact.

9-That clear violation of Section 24A of the General Clauses Act 1897 has been made by not responding to all the appeals of Appellant which is not sustainable in the eye of law that authorities having statutory powers must exercise the same in fair, just and reasonable manner. The impugned decisions of the Respondents are unfair, unjust, and therefore, not maintainable.

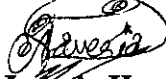
10-That under the mandate of Article 4 of the Constitution, no one should be treated otherwise than in accordance with law, but, here the case is *volta facie* and a totally different yardstick has been used to treat the Appellant.

11-That the long-continued service of the Appellant, which depends on length of her service and equity, justifiably desires, and requires that having render her prime youth, career and life in the services of the Respondents while working in Higher Education Department, Khyber Pakhtoonkhwa, the Appellant may not be exploited or hung in dark with infringement of fundamental rights as in Article 4, 10A, 25, and 27 of Constitution of Pakistan.

12-That the law and honourable courts of law have always preferred and appreciated that rules are to be followed, and have always discouraged, deplored, and depreciated any variation from rules or its violation.

13-That any other grounds will be raised at the time of arguments with kind permission of Honourable Khyber Pakhtoonkhwa Service Tribunal.

Appellant (by self)



Dr. Javeria Haroon (Ph.D.),
Assistant Prof. of Chemistry (BPS-18),
Govt. Girls Post Graduate College,
Haripur.

Dated: 22-06-2023

CERTIFICATE

Certified as per instructions that after getting no response for her departmental appeals, this is the first appeal in this Honourable Provincial Service Tribunal, Khyber Pakhtoonkhwa against all related impugned actions including notifications and decisions by respondents for directions to respondents of Higher Education Department, Khyber Pakhtoonkhwa, for expeditious processing of rectification and expunge of adverse remarks along with upgradation of ACRs/PERs (2017, 2020, 2021, 2022). Nothing is pending related to subject above in any other court of law.

REFERENCE BOOKS

1. A Guidance to Performance Evaluation (2004). Pakistan Public Administration Research Centre, Management Services Wing, Establishment Division, Cabinet Secretariat, Islamabad: 1-138.
2. ESTACODE (2021). Pakistan Public Administration Research Centre, Establishment Division, Cabinet Secretariat, Islamabad: 1-1044.

ADDRESSES OF PARTIES

- 1) Honourable Secretary Higher Education, Khyber Pakhtoonkhwa, Civil Secretariat, Peshawar.
- 2) Honourable Director of Higher Education, Directorate of Higher Education (Colleges), Near Northern By Pass, Rano Garhi, Peshawar.