

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.991/2017

Date of presentation of Appeal.....05.09.2017
Date of Hearing.....21.06.2023
Date of Decision.....22.06.2023

Mr. Muhammad Shakeel, Divisional Forest Officer, Battagram
Wildlife Division, Battagram.....*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa, Forest, Environment & Wildlife Department**, through Secretary Forest, Peshawar.
2. **The Conservator**, Wildlife Forest Offices Complex Shami Road, Peshawar.
3. **The Chief Conservator**, Wildlife Forest Offices Complex, Shami Road, Peshawar.....(*Respondents*)

Present:

Mr. Nasir Khan Jadoon, Advocate.....For appellant
Mr. Asad Ali Khan, Assistant Advocate General.....For respondents

APPEAL UNDER SECTION-4 OF THE Khyber PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER OF RESPONDENT NO.1 DATED 18.07.2017, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST ORDER/ADVERSE REMARKS OF THE RESPONDENT NO.2 CONSERVATOR DATED 03.03.2015 ENDORSED BY CHIEF CONSERVATOR RESPONDENT NO.3 WAS REJECTED AND ORDER/REMARKS DATED 03.03.2015 WAS UPHELD.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant's case in brief is that adverse remarks were communicated to him which were recorded in his Performance Evaluation Report (PER) for the period from 04.02.2014 to 16.09.2014.

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2. Feeling aggrieved, he filed departmental appeal for expunction of the impugned adverse remarks but his appeal was rejected, hence, the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

5. Learned counsel for the appellant submitted that the impugned remarks by the respondents were illegal, against law, facts and circumstances. He submitted that the reporting officer had supposed to comment on Performance highlighted by the appellant in part-II (2) of the PER with special reference to knowledge of work, quality and quantity of output and achievements of target, but the PER had been reported with malafide. Further submitted that during the service period, no warning or counseling had been given to the appellant and without any show cause notice or inquiry the same were issued, which was illegal. He concluded that the appellant was submissive, vigilant and was of calm nature in performing the duties, therefore, he requested that the impugned adverse remarks and the rejection order might be declared as illegal and without lawful authority and the disputed remarks may kindly be expunged.

6. Conversely, learned Assistant Advocate General submitted that the adverse remarks recorded by the respondents were in accordance with the prevailing rules/regulations, and after fulfillment of all codal formalities, the same were recorded and no irregularity had been committed by the respondents. He submitted that the reporting officer had looked into the overall performance of the appellant as per his service record as well as his performance during the period under report; that the adverse remarks were recorded on the basis of his poor performance; that the appellant was counseled orally and in writing but the appellant never followed such instructions during the period under report; that the competent authority had visited several times at the construction site and instructed the appellant to improve his performance but he had always showed ignorance. He concluded that that the explanation of the appellant, for performance of his duties, prior to 2014, had no concern with performance for the year 2014. Therefore, he requested for dismissal of the instant service appeal.

7. Perusal of record shows that appellant was serving as Divisional Forest Officer. While performing his duties, he was warned regarding his performance of duties as well as his presence at duty station. The officers visited the construction site and issued instructions to the appellant that he should improve. The disputed remarks in the PER for the period from 14.02.2014 to 16.09.2014 communicated vide order dated 03.03.2015 as under:

"PART-III

8: D
5: D
8: D



9: D

PART-IV

2. Very dubious
3. He is simply a differ and mere liability for the Government. Fully determined never to learn from past omissions and mistakes.
4. He is very casual in approach.
5. Trained a lot but counterproductive."

The explanation called from the appellant on 02.06.2014 is reproduced as under:

"You were directed several times verbally to keep your physical presence at your duty station at Battagram Wildlife Division but despite repeated instructions you have feel no attention to the instructions of the undersigned. This is evident from the fact that you have been found absent from your duty station from 29.05.2014 till date. The undersigned also sent SMS on your mobile to talk to the undersigned but no response from your side has so far been received. On 31.05.2014, this office also contacted but you were not available in your office. This office has also learnt from reliable resources that you are available in your residence at Abbottabad but did not bother to visit your office.

You are therefore, called upon to explain/justify your position in this regard. Your response to this office must reach the undersigned within 03 days after he receipt of this official letter otherwise, ex-parte action will be taken against you".

Another explanation dated 11.06.2014 is as under:

"It has been noted through reliable resources that on 9th of June, 2014 you were in Abbottabad instead of you duty station at Battagram. You have been directed several times to keep your physical presence at your duty station in Battagram but you pay no attention to the instruction of this office which tantamount to misconduct on your part. You are therefore called upon to explain your position in this regard. Your reply must reach this office within two days otherwise you will face the consequences".

The remarks given in the impugned order are much different from the contents of explanations called from the appellant. The remarks in the PERs were that he was a counterproductive officer and had failed to perform his duties vigilantly. While in the explanations dated 02.06.2014

& 11.06.2014 called on from the appellant, were regarding the absence of the appellant at the construction site. Besides, we have given due consideration to the adverse observations in the light of relevant instructions and we are obliged to find that some of them do not appear to have been strictly observed. It is provided in the Guidelines 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 counseling. In the present case, however, there is nothing to show that such proper counseling 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.

8. 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. Therefore, on acceptance of this appeal, the adverse remarks recorded in the PER for the period from 04.02.2014 to 16.09.2014 are expunged. Consign.

9. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 22nd day of June, 2023.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)