

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

EP #. 229/23

S.A # 857/19

Mr. Shabir Ahamd ..... Appellant

Versus

Govt of Khyber Pakhtunkhwa,  
Through Secretary, Higher Education,  
Khyber Pakhtunkhwa, Peshawar  
& others.....

Respondents

**INDEX**

S.No	Description of documents	Annexure	Page No.
1.	Parawise Comments		1
2.	Affidavit		2
3.	Authority letter		3
4.	Judgment dated 02.02.2022	A	4-6
5.	Office Order 17/08/2022	B	7

  
Respondents

Next dt: 6/07/23 Peshawar

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**

**PESHWAR**

Khyber Pakhtunkhwa  
Service Tribunal

**EXECUTION PETITION NO. 229/2023**

S.A # 857/19

Diary No. 6286

Mr. Shabir Ahmad.....Appellant

Versus

Dated 05/07/23

Govt. of Khyber Pakhtunkhwa Through Secretary Director, Higher Education Peshawar & Dy: Director (Establishment), Directorate of Higher Education..... Respondents

**SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3**

**Respectfully Sheweth: -**

- 1) Correct: - to the extent that the appellant filed SA # 857/2019 which was decided by the Hon'ble Tribunal Vide Judgment Dated 02/02/2022
- 2) Correct to the extent that the tribunal Decided the case vide Judgement dated 02/02/2022 (Annex-A).
- 3) Incorrect: When certified copy of the Judgment was received the same was processed for implementation and vide Order dated 17/08/2022 the judgment was implemented. (Annex-B)
- 4) Incorrect: That the appellant is trying to mislead the Hon'ble Tribunal that the tribunal accepted the appeal and set aside the impugned orders and expunged his adverse remarks only. Operating part of the Judgment is read as under:  
"We are of the considered opinion that the appellant has not been treated in accordance with law, as the adverse remarks were communicated without adhering to the method prescribed in law and his departmental appeal was decided by the reporting officer instead of the appellate authority. In view of the foregoing discussion, the instant appeal is accepted. Impugned orders are set aside and the adverse remarks for the period from 01/01/2014 to 31/07/2014 is hereby expunged"
- 5) That the Judgment of the tribunal has already been implemented vide office order dated 17/08/2022.

**Prayer:-**

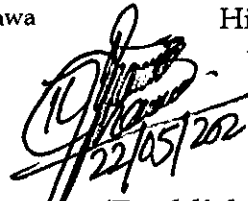
It is, therefore, humbly prayed that the instant Execution Petition is based on misconception/misstatements hence may graciously be dismissed.

  
Secretary,

Higher Department Education Khyber Pakhtunkhwa  
Respondent No. 1

  
Director,

Higher Education Khyber Pakhtunkhwa  
Respondent No. 2

  
22/05/2022

**Dy: Director, (Establishment)**

Directorate of Higher Education Khyber Pakhtunkhwa  
Respondent No. 3



**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA  
RANO GHARI, CHAMKANI STOP, PESHAWAR**

Tel # 091-2650024 / Fax # 091-2260181

E-mail:- [dhekpkesh@gmail.com](mailto:dhekpkesh@gmail.com) Facebook.com/dhekpkeshwar Twitter.com/dhekpkeshwar1

**AUTHORITY LETTER**

Mr. Ihtisham, Superintendent (lit), Directorate of Higher Education is hereby authorised to submit reply in EP # 857/19 in SA# 857/19 titled Shabir Ahmad versus Govt: Khyber Pakhtunkhwa on behalf of respondents.

 Director,

Directorate of Higher Education,  
Khyber Pakhtunkhwa Peshawar



**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

EP. # 229/23

S.A 857/19

Mr. Shabir Ahmad..... Appellant

Versus

Govt of Khyber Pakhtunkhwa,  
Through Secretary, Higher Education,  
Khyber Pakhtunkhwa, Peshawar  
& others..... Respondents

**AFFIDAVIT**

I, Ihtisham, Superintendent (Litigation), Higher Education Department do hereby declare and affirm on oath that the contents of reply in EP.229/23 are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court. It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor their defense has been struck off.

Identified by:

Deponent

21505-2684026-1

0333-9326783

**ATTESTED**



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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 857/2019

Date of Institution ... 24.05.2019

Date of Decision ... 02.02.2022



Shabir Ahmad S/o Naseer Ahmad Laboratory Assistant, Government Degree College Akora Khattak, District Nowshera. ... (Appellant)

VERSUS

Secretary Higher Education Department, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Yasir Saleem  
Advocate ... For Appellant

Muhammad Adeel Butt,  
Additional Advocate General ... For respondents


**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQU-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

JUDGMENT

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are

that the appellant while serving as Laboratory Assistant in Higher Education Department was communicated adverse remarks in his PER for the period from 01-01-2014 to 31-07-2014, against which the appellant filed departmental appeal followed by Service Appeal No. 421/2016, which was decided vide judgment dated 19-10-2018 and his appeal was treated as departmental appeal and remanded to the respondents to decide his departmental appeal within a period of 90 days. departmental appeal of the appellant was rejected vide order dated 23-04-2019, hence the instant service appeal with prayers that the impugned orders dated 17-12-2015 and 23-04-2019 may be set aside and adverse remarks may be expunged from the PER of the appellant with all consequential benefits.

**ATTESTED**

  
ENABLER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Attested.  


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02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the vague and ambiguous remarks in PER for the period in question are un-founded and are based on personal grudge of respondent No. 4, who violated the settled instructions relating to writing of PER and thus exercised his authority unlawfully, without any cogent reason and material evidence; that the appellant earned good ACR throughout his long career and the instant adverse entry in his PER is the outcome of personal grudge of respondent No. 4, hence the adverse remarks are liable to be set at naught; that adverse remarks were communicated to the appellant after a year time, which are not to be considered at all, as such remarks communicated with delay are unlawful; that the appellate authority instead of applying his own prudent mind, sent back the departmental appeal to respondent No. 4 and in light of his recommendations, regretted his departmental appeal vide order dated 23-04-2019; that no counseling was made with the appellant before giving adverse remarks in his PER, which is against the rules of writing of PER; that the impugned appellate order is not a speaking order and is liable to be set aside.

Wh

03. Learned Additional Advocate General for the respondents has contended that as for as the adverse remarks in PER for the period from 01-01-2014 to 31-07-2014 of the appellant is concerned, the same was given due to the appellant poor performance and his conduct in official duty and as a reporting officer, respondent No. 4 was in a better position to form an opinion about the appellant; that in compliance of the judgment dated 19-10-2019 passed by this tribunal, the PER was sent to the reporting officer for re-examination but the request was regretted by the reporting officer vide letter dated 07-02-2019, which was communicated to the appellant vide order dated 23-04-2019.

Deleted.  
Shouq  
Khan

04. We have heard learned counsel for the parties and have perused the record.

**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

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05. Record reveals that the appellant was communicated adverse remarks for the period from 01-01-2014 to 31-07-2014 vide order dated 21-11-2015, which was not correct as the adverse remarks are required to be communicated within the same year. Record would suggest that no counseling was made with the appellant before giving adverse remarks to the appellant, which is also violation of the rules containing instructions regarding writing of PER. Departmental appeal of the appellant was required to be examined by the appellate authority, instead he referred it to the reporting officer and upon opinion of the reporting officer, his departmental appeal was rejected, which however was not warranted. We have also observed that there was a tussle between the appellant and the reporting officer, which is evident from record, hence the adverse remarks were based on personal grudge of the reporting officer, which smacks malafide on part of the respondents.

06. We are of the considered opinion that the appellant has not been treated in accordance with law, as the adverse remarks were communicated without adhering to the method prescribed in law and his departmental appeal was decided by the reporting officer instead of the appellate authority. In view of the foregoing discussion, the instant appeal is accepted. Impugned orders are set aside and the adverse remarks for the period from 01-01-2014 to 31-07-2014 is hereby expunged. Parties are left to bear their own costs. File be consigned to record room.


ANNOUNCED  
02.02.2022

Alleged.  
Ahmad Sultan Tareen

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

Certified to be true copy

  
MINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA  
RANO GHARI NEAR CHAMKANI MOR, PESHAWAR**

E-mail:- [dhekpkesh@gmail.com](mailto:dhekpkesh@gmail.com) Facebook.com/dhekpkeshavar Twitter.com/dhekpkeshavar1

Dated Peshawar the 17/08/2022

**OFFICE ORDER:**

In pursuance of the Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment in service appeal no. 857/2019, announced on 02-02-2022, the Competent Authority (Director, Higher Education) is pleased to expunge the adverse remarks for the period from 01-01-2014 to 31-07-2014 in r/o Mr. Shabir Ahmad, Lab Assistant Govt: Degree College, Akorra Khattak, Nowshera.

**DIRECTOR, HIGHER EDUCATION**

**Endst: No. 15014-18** /CA-VII/Estb: Section/Mr. Shabir Ahmad SA# 857/2019

Copy of the above is forwarded to the: -

1. Principal, Govt: Degree College, Akorra Khattak (Nowshera)
2. District Account Officer, Nowshera.
3. Assistant Director (ACR), Local Directorate.
4. Superintendent (Promotion Cell), Local Directorate.
5. Official concerned.

*[Signature]*  
17/08/22

**DEPUTY DIRECTOR (Estt)**

*Collected.*  
*[Signature]*

*o/c*