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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO 235 OF 2023

AHSAN SHEHZAD VS ADMINISTRATIVE JUDGE, PHC AND OTHERS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 70/17
Dated: 11/9/23

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ALONGWITH THREE SET COPIES

سید اہسان شہزاد
11/9/23

counter signed
Superintendent
District & Sessions Court,
Peshawar.



DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

Ph#091-9210099 Fax#091-9212419
eMail: scPeshawar@yahoo.com
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No. 3245
Dated Peshawar 24/5/23

To

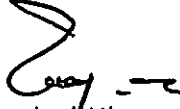
The Learned Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: **REPLY TO SERVICE APPEAL NO. 235/2023**
Ahsan Shehzadvs.... PHC & others

Dear Sir,

I am directed to submit para-wise reply to the subject appeal,
duly signed by the respondents No. 1 to 8, along with necessary/relevant
documents, please.

Encl: AS ABOVE


Rahmdad Khan, Superintendent,
Sessions Court, Peshawar.
Superintendent
District & Sessions Court,
Peshawar.

(2)

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Appeal No. 235 of 2023

Ahsan Shehzad

—VS—

Administrative Judge, Peshawar High Court, Peshawar & others

Written Statement/Reply on Behalf of Respondent No. 1 to 3

FACTS

1. Incorrect. The official under appeal has a long history of being a clumsy and uncooperative employee. He has received numerous explanations, warnings, and other penalties from various presiding officers, which is sufficient proof of his indifference, unwillingness, and incapacity.
2. Incorrect. The appellant/official has a history of evading his duties. He is a habitual late comer. His overall reputation is also hazy and dubious.
3. Incorrect. The appellate official spent most of his service distracted and under complaint. The adverse remarks recorded in the ACR for the year 2021 were on the basis of observation and evaluation of the undersigned, based on numerous complaints received from different quarters.
4. Incorrect. The appellant official should have seen it coming because he has never taken his sacred duties seriously. His work ethic and dedication to this institute had never been great. The appellant official has established himself as an uncooperative, unwilling, lethargic, and ineffective official through a variety of disciplinary actions taken against him.
5. Incorrect, as explained in Paras 1 to 4 above.
6. Incorrect. The appellant official was dropped from promotion on two grounds, i.e. (1) on the basis of adverse remarks in ACR and (2) The minor penalty awarded by the august Peshawar High Court, Peshawar in Departmental Appeal No. 12/2007, decided on 20/06/2008 (Annex-

(2)

D), to the effect that he shall not be considered for promotion, only once, whenever his case for promotion, along with colleagues, is processed. The said order has not been challenged by the official concerned, thus, remaining intact.

7. Correct to the extent that appellant official has filed an appeal against adverse remarks in his ACR, which is still pending.
8. Need no comments.


GROUND


- A. Incorrect. The adverse remarks recorded in his ACR have been duly communicated to the appellant/official via letter No. 879 dated 07/02/2022 (**Annex-A**).
- B. Incorrect. The appellant official has a general reputation of being incompetent and unwilling worker, as evident from large number of explanations called and warnings etc, issued to him by different Presiding Officers.
- C. Incorrect. The issue in hand is the adverse remarks recorded in the ACR of appellant/official. This Office has not received any application in this regard, except a Departmental Appeal, which was forwarded to the august Peshawar High Court, via letter No. 5987 dated 04/10/2022 (**Annex-B**).
- D. Incorrect. The appellant/official has been treated in accordance with law and no discrimination has been made in any case.
- E. Incorrect. The adverse remarks recorded in the ACR for the year 2021 was based on the observation and evaluation of the undersigned. After the posting as District & Sessions Judge Peshawar, the undersigned has received many oral complaints against the official concerned. His overall reputation is also cloudy and shady. Being countersigning Officer, the undersigned had to evaluate the official under report and give his actual perception of the person. Since, the undersigned is not satisfied with the attitude and performance of the appellant official, therefore, the adverse remarks were recorded in his ACR.

F. Incorrect. As explained in para-D above, the appellant/official has been treated in accordance with law, and no illegality or irregularity has been committed.

It is also added that the appellant/official has proved himself to be an unwilling, lazy, non-cooperative and inefficient official, as evident from long range of disciplinary proceedings against him. Even in the present case, the laziness and languor of appellant official could be seen as he failed to assail the adverse remarks in question in time, despite the fact that the same were communicated to him on 07/02/2022, while he filed the first Departmental Appeal on 03/10/2022, i.e. after a lapse of 08 months. Though, he submitted an Application for Condonation of Delay but he failed to provide any cogent or plausible explanation for filing the appeal after a lapse of 08 months.

In view of the above, it is submitted that the impugned adverse remarks have been recorded strictly on merit and in accordance with law. The appeal in hand being devoid of merits has no weightage in the eyes of law, therefore, the same may kindly be dismissed, please.


tv
[Registrar]
Peshawar High Court,
Peshawar


[ASHFAQUE TAJ]
District & Sessions Judge,
Peshawar

Annex-A (5)



DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

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No. 879
Dated Peshawar 07/2/22

CONFIDENTIAL

To

Mr. Ahsan Shehzad, Junior Clerk
Sessions Court, Peshawar.

Subject: **COMMUNICATION OF ADVERSE REMARKS**

Memo:

The following adverse remarks, recorded in your ACR for the year 2021, are communicated to you for information.

“I do not agree with the Reporting Officer. The official misbehaves with the co-workers. He is arrogant and inefficient. Adverse.”

[Handwritten Signature]

District & Sessions Judge,
Peshawar.

[Handwritten Signature]

[Handwritten Signature]

Superintendent
District & Sessions Court,
Peshawar.

(5)

Annex-B' (6)



DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

Ph#091-9210099 Fax#091-9212419
eMail: scPeshawar@yahoo.com
web: SessionsCourtPeshawar.gov.pk

No. 5987
Dated Peshawar 04-10-2024

Pushawar High Court, Peshawar.
Revised No. <u>13353</u>
Date <u>5-10-2024</u>
For action <u>ARC</u>
Signature <u>[Signature]</u>

To
The worthy Registrar,
Peshawar High Court,
Peshawar.

Subject: **DEPARTMENTAL APPEAL ALONG WITH APPLICATION FOR CONDONATION OF DELAY**

Dear Sir,

The subject Departmental Appeal, along with application for condonation of delay, filed by Mr. Ahsan Shehzad, Junior Clerk of this Office, is forwarded herewith, please.

Encl: AS ABOVE

[ASHFAQUE TAJ]
District & Sessions Judge,
Peshawar.

Attested

[Signature]
Superintendent
District & Sessions Court,
Peshawar.

(6)

To,

The Hon'ble Chief Justice
Peshawar High Court, Peshawar.
Through Registrar, Peshawar High Court, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE REFERENCE LETTER NO. 879 DATED: 07-02-2022 UPTO THE EXTENT OF EXPUNCTION OF ADVERSE REMARKS RECORDED IN THE ANNUAL CONFIDENTIAL REPORT (ACR) OF THE APPELLANT FOR THE YEAR 2020-2021.

Respectfully Sheweth,

With high reverence, due deference and utmost obeisance, the Appellant very humbly solicits the instant Representation to your good-self office, to the following effect:

1. That the Appellant is a naturally born *bona-fide* citizen of Islamic Republic of Pakistan and hails from a respectable family.
2. That after getting onto the rolls of this prestigious department in the year 2003, the Appellant have had pulled day & night to render his best in the service of the department with utmost zest and professional gusto, which is crystal evident from the long-stretched service period of the Appellant spread over two successful decades, that too without receiving any taint or blemish on the Appellant's service record.
3. That the Appellant has have always upheld the professional confidence, the sanctity of the department with practically unanimous determination towards his personal professional work ethic and personal (moral) aptitude, just not only to receive admiration from his high ups about his professionalism but the Appellant's believe in work has been steering him in every way (in & off duty) to bring home and won the reverence from the people of interaction and general public for the home department of the Appellant.
4. That the Appellant's faith in his work and the commitment to the social cause aligned with the vision of the department does not liberate the Appellant to go off-track in anyway, which is why the Appellant had

Alhad
Superintendent
District & Sessions Court,
Peshawar.

1556
03/10/22

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(8)

been successful to put excellent stats and marvelous track on his every evaluation, assessment, and record, till the instant stimulus, whereby the Appellant was taken aback on communication of his Annual Confidential Report (ACR) vide Reference Letter No. 879 Dated: 07-02-2022 in respect of which the Appellant was made subject to adverse remarks upon his work aptitude and professional behavior. **(Copy of the ACR is enclosed herewith)**

5. That not even in the wildest dreams and stormiest days, the Appellant could have ever saw it coming that the what the Appellant have had been practicing and preaching religiously for the two professional decades would render him questionable and liable to explanation i.e., professional behavior & commitment to his duty, but what strangest woe!

6. That the it is pertinent to derive your attention towards the unadorned fact that the Appellant holds a flawless record , and even for the said year of 2020-2021, the Appellant was in the apprehension of the same sanguinity as the Reporting Office for the subject ACR had penned down a great performance & record of excellence for the Appellant, the scenario got *volta-facie* when the same was forwarded to the Countersigning Officer who not only transverse the record of the Appellant but also revised the remarks from "very good" to "adverse" that too without any rhyme and reasons.

ALL

7. That it is settled principle and rule of law that whilst any "adverse remarks" are being added or holds the chance of being added to the one's ACR, the person shall be intimated mandatorily with a Warning Letter or Counselling as per settled dictum by the several judgments of the Superior Courts on the subject, but in the case of the Appellant, unbothered from the situation, the department did not communicate the same to the Appellant even after his ACR was recorded and consigned to the record room.

8. That what caused the much adversity was that the neither the Appellant's appearance was sought for the explanation, nor any findings or material evidence were recorded even in the ACR from

Handwritten signature
Superintendent
District & Sessions Court,
Peshawar.

(8)


(9)

which the Appellant could have drawn his analogies of what went wrong on his part. But, simply with the lift of the pen, the presumptions were named as conclusions in the ACR of the Appellant.

9. That pursuant to consequences, from the above-mentioned saga, the Appellant have had been punished in the shape of non-consideration for promotion whereas the entire career of the Appellant portrayed zeal & zest when finally, it was the time to benefit from the same, every effort and struggle on part of the Appellant have gone down the hill.
10. That in the given circumstances whereby the Appellant has been punished for no sake of his own and all his fatigue over the past years have only met the dust, the Appellant solicits a revised ACR whereby the "adverse remarks" be expunged, and the long-standing performance of Appellant be kept in view for the revised ACR.

It is therefore, most humbly requested that on acceptance of the instant representation the ACR of the Appellant for the year 2020-2021, graciously be modified up-to the extent of expunction of the "adverse remarks" to the "very good".

Dated: 23 October 2022


Ahsan Shahzad
Junior Clerk
District & Sessions Court,
Peshawar.

Alid
Superintendent
District & Sessions Court,
Peshawar.

(9)

To,

The Worthy Administrative Judge
Peshawar High Court, Peshawar.

Subject: APPLICATION FOR CONDONATION OF DELAY

Respected Sir,

1. That the Applicant is serving as a Junior Clerk in Subordinate Judiciary and has working out his performance in the service of the department with utmost zeal & zest.
2. That in the earlier 2022, the Applicant was intimated his ACR for the year 2020-2021, but up-to the chagrin of the Applicant his ACR comprised of "adverse remarks" instead of "very good".
3. That the Applicant has have moved the Appeal/Representation against the ACR to the Competent Authority whereby the instant Application for condonation of the delay be also considered as part and parcel of the main Representation.
4. That the delay in filing the instant Representation is neither deliberate nor intentional but rather the Applicant was buried under the workload of the home department.
5. That a per the dictum of the Superior Court and settled principle of provision of section 30 of the Khyber Pakhtunkhwa Epidemic Control & Emergency relief, the delay in the filing of the Representation on behalf of the Applicant holds enough water to be condoned and entertained.
6. That there is no legal hedge in allowing the instant application.

It is therefore most humbly prayed that on acceptance of the instant application the delay in filing the Representation against the ACR and the representation be perused for consideration.

Dated: 3rd October 2022

Ahsan

Superintendent
Superintendent
District & Sessions Court,
Peshawar.

Ahsan Shahzad
Ahsan Shahzad
Junior Clerk
District & Sessions Court,
Peshawar.

Amere D (11)

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

D.A.....No.....12.....of.....2.007.

JUDGMENT

(10)

Date of hearing 20-06-2008

Appellant (Ahsan Shahzad) in person

Respondent (District Sessions Judge, Pesh) by Mr. Abdul Salam, Assistant

JEHANZAIB RAHIM, J.- This departmental appeal is directed against the order dated 05.06.2007 passed by the learned Sessions Judge, Peshawar, whereby the appellant; Ahsan Shahzad, Junior Clerk, was removed from service.

Brief facts of the case are that departmental proceedings against the appellant were initiated on the report of Mr. Tila Muhammad, JM-III, Peshawar that the appellant, while serving as Muharrir, had remained absent from duty for 06 days without application or intimation. The Authority, while finding the appellant's explanation unsatisfactory, appointed learned ADJ-I, Peshawar as authorized officer to proceed against him, who, served him the charge-sheet as well as statement of allegations and in turn appointed Mr. Ahmad Iftikhar, JM-I, Peshawar as inquiry officer to conduct the inquiry. The Inquiry Officer in his report has found the charge of absence from duty proved and suggested for clemency. The Authorized Officer in his report, however, recommended for removal

ABD


Abdul
Superintendent
District & Sessions Court,
Peshawar.

(11)

from service and, accordingly, the appellant vide order dated 05.06.2007 was removed from service with immediate effect.

I have heard the appellant as well as Abdul Salam, representative of the Department and have gone through the record.

Perusal of the record reveals that the appellant's plea that he, in the first week of March, 2007 became ill, was duly supported by medical certificate, which was not controverted by the Department. Equally, his plea regarding his later absence from duty, if any, was the result of not signing the Attendance Register, which was lately kept for the purpose and, as per previous practice, he had never marked his attendance, was duly supported by Muhammad Zahoor Khan, the witness of record. Besides, the Department has not followed the procedure as visualized by Section 8-A of the NWFP Government Servants (Efficiency and Discipline) Rules, 1973 applicable to cases of willful absence from duty by a Government Servant. Not only that, the appellant has been punished contrary to the recommendation of the Inquiry Officer, which was based on his previous record of good integrity and official talent. No doubt, the appellant in the previous two inquiries of similar charges, were awarded the sentences of censure and stoppage of increment for one year but his previous punishment cannot be used for his removal from service on the basis of charge which the department otherwise could not prove as being willful.


Superintendent
District & Sessions Court,
Peshawar.

Consequently, this appeal is partially accepted, the impugned order dated 05.06,2007 is set side and the appellant is re-instated in service but with minor penalty that he shall not be considered for promotion only once whenever his case for promotion, alongwith his colleagues, is processed. The appellant's claim, if any, respecting back benefits etc. of service, shall be entertained but in accordance with the law laid down in Qadeer Ahmad vs. Punjab Labour Appellate Tribunal, PLD 1990 SC 787 and Abdul Hafeez Abbasi vs. Managing Director, PIAC, 2002 SCMR 1034.

Announced
20.06.2008.

JUDGE

SW
Zaid
Superintendent
District & Sessions Court,
Peshawar.

(13)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

(14)

Service Appeal No. 235/2023

Ahsan Shehzad Appellant

Versus

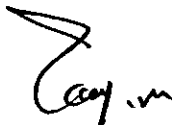
Peshawar High Court, Peshawar Respondents

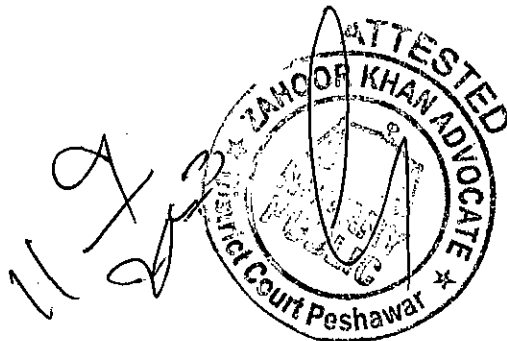
COUNTER AFFIDAVIT

I, **Rahmdad Khan, Superintendent, District Judiciary, Peshawar** do hereby affirm and declare on oath that the contents of this reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Court.

It is further stated on oath that this appeal the answering respondents have neither been placed ex-parte nor their defence has been struck off.

Deponent


**Superintendent
District & Sessions Court,
Peshawar.**



(14)