

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 275/2022

Date of Institution ... 17.02.2022

Date of Decision... 12.09.2023

Malik Sheraz Khan S/O Abdul Raziq, R/O Chakar Kot, Janis Khel, Kohat.
Presently posted as Junior Clerk, DPO Office at Kohat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home, Civil
Secretariat, Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

MR. HASSAN U.K AFRIDI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was appointed as Junior Clerk in Police Department vide order dated 06.01.2010. During his service, adverse remarks were recorded in ACRs of the appellant for the period from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019. Feeling aggrieved, the appellant filed departmental appeal, which was filed vide order dated 18.01.2022, hence the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through

their representative and contested the appeal by way of filing written reply raising therein numerous legal and factual objections.

3. Learned counsel for the appellant contended that adverse remarks have been recorded in ACRs of the appellant for the period with effect from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019 without any counseling, warning or advise, therefore, the instructions relating to recording of adverse remarks in ACRs of a Government Servant have not been complied with. He next contended that the impugned adverse remarks recorded in the ACRs of the appellant are against the fundamental rights of the appellant as embodied in the Constitution of Islamic Republic of Pakistan, 1973. He next contended that the reporting officer, who had recorded adverse remarks in the ACRs of the appellant had himself sent letter No. 56/RO/CTD/RWP dated 03.01.2022 to the Inspector General of Police Khyber Pakhtunkhwa seeking expunction of the adverse remarks entered by him in the ACRs of the appellant. He further contended that except the adverse remarks in question, there is no minor or major punishments in service record of the appellant, therefore, the adverse remarks recorded in the ACRs of the appellant for the period from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019 are liable to be expunged:

4. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant was neither performing his duty properly nor he was obeying directions of the

authority, therefore, adverse remarks were rightly recorded in his ACRs for the period from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019.

5. We have heard the arguments of learned counsel for the parties and have perused the record.


6. A perusal of the record would show that that the appellant was appointed as Junior Clerk vide order dated 06.01.2010. The appellant is aggrieved of the adverse remarks recorded in his Performance Evaluation Report for the period from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019. The appellant was rated as not worthy of trust in confidential and secret matters as well as below average and not yet fit for promotion. According to the guide lines and settled procedure for filling of ACRs, before recording of adverse remarks in Annual Confidential Report, Reporting Officer is required to issue letter for reformation and improving oneself to his subordinate. In the instant case, no letter for reformation and improvement in shape of counseling was issued to the appellant by the reporting officer. Similarly, even no explanation before recording of adverse remarks in the ACR was asked from the appellant by the reporting officer and countersigning authority. Adverse remarks recorded by reporting officer are without any documentary proof in shape of complaint from any quarter. Record is silent in respect of bringing into the notice of the appellant about his weaknesses and defects by the reporting officer and also that whether appellant has not taken steps to




remedy/remove such defects which was mentioned by the reporting officer in his ACR. Moreover, nothing is available on the record to show that except the adverse remarks in question, the appellant has earned any adverse remarks during his career.

7. Consequently, the appeal in hand is allowed and the impugned adverse remarks recorded in the ACRs of the appellant for the period from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019, are expunged. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.09.2023


(FARZEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

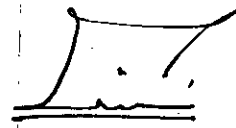
ORDER
12.09.2023

Appellant alongwith his counsel present. Mr. Arif Saleem, Steno alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed and the impugned adverse remarks recorded in the ACRs of the appellant for the period from 01.01.2019 to 31.05.2019 as well as 01.11.2019 to 31.11.2019, are expunged. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.09.2023


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)