

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 1609/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER(E)

Muslim Khan S/O Ghani-ur-Rehman R/O Mayar Mardan, Deputy Superintendent of Police, Special Security Unit (SSU) Balakot, now in Peshawar. .... (Appellant)

Versus

1. Capital City Police Officer, Peshawar.
2. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar. ... Respondents)

Arbab Saiful Kamal,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution.....	11.11.2022
Date of Hearing.....	26.03.2024
Date of Decision.....	26.03.2024

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 20.09.2022 of respondent No. 1 whereby adverse remarks against the appellant for the period from 01.01.2021 to 31.12.2021 was recorded i.e not fit for promotion and against office order dated 08.11.2022 of respondent No. 2 whereby representation of appellant was filed/rejected. It has been prayed that on acceptance of the appeal, the impugned adverse remarks dated 20.09.2022 and 08.11.2022 of the respondents be set aside and removed from personal dossier of appellant, alongwith any other relief which the Tribunal deemed appropriate.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Constable in the year 1988 and was promoted to the rank of Head Constable in the year 1996. In the year 2003, he was further promoted to the rank of ASI, followed by further promotion to the rank of Sub Inspector in the year 2008. In the year 2011, he was promoted to the rank of Inspector and then to the rank of Deputy Superintendent of Police in the year 2017. He was posted as DSP, LRH on 21.10.2021 as Incharge of the post for general checking of the vehicles as well as general public. At the same time, two different bodies, i.e police personnel and retired army personnel, were supervising the security of LRH and both of them had different criteria of checking. Numerous complaints were recorded in Daily Diaries from 21.10.2021 to 18.03.2022 against the retired Army personnel as their behavior was not per standard/mandate with patients and general public. On 25.03.2022, DSP City-I Sub Division Peshawar wrote a letter to Administrator LRH Peshawar about the lethargic behavior and attitude of Hazrat Khan, who was the right hand man of the Director, a retired Brigadier, for creating problems and using abusive language against the police with the request to take action against him. It was mentioned in the letter that he quarreled with patients as well as general public. The said security guard, namely Hazrat Khan, conspired against the appellant and complained to the high ups of the police as a result of which he (the appellant) was not only transferred from the hospital but respondent No. 1 recorded adverse remarks against him for the period from 01.01.2021 to 31.12.2021 which were communicated to him after more than nine months. On 03.10.2022, he submitted representation before

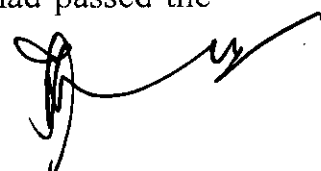


respondent No. 2 for expunction of the adverse remarks which was rejected/filed on 08.11.2022, without any reason and justification; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that before recording the said remarks, neither any explanation was called nor any warning was issued or counseling done rather adverse remarks were recorded straightaway. He argued that the adverse remarks were recorded in the ACR of 2021 and as per instructions, it was the duty of the authority to convey the said ACR within one month but it was conveyed to the appellant after nine months without any justification. He argued that the appellant was not dealt with as per the mandate of law and the adverse remarks were based on malafide intention. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that a fair process in the respondent department was done and in case of commission of misconduct, the defaulter was penalized under the relevant law as per gravity of misconduct. He further argued that during the period of posting in LRH, several complaints were received against the appellant but he did not improve his performance, resultantly the Reporting Officer had passed the



adverse remarks against him. He argued that the appellant was verbally directed to mend his ways but he turned deaf ears to the directions of his superiors. He argued that if any conspiracy was made by the security Guard Hazrat Khan against the appellant then he was under obligation to bring it in the notice of his superior officers which he did not do. He requested that the appeal might be dismissed.

6. Through this service appeal, the appellant has prayed for expunging the adverse remarks recorded by the countersigning officer in his Performance Evaluation Report for the period from 01.01.2021 to 31.12.2021. During the period under report, the appellant was performing duties at the Lady Reading Hospital Peshawar as Incharge of the post for general checking of vehicles and public. Arguments and record presented before us show that some retired army personnel were also deployed for the security and checking at the entry points of the hospital, alongwith the police personnel. Some rift existed between the army and police personnel which was reported in the form of Naqalmad and various roznamchas on different dates by the appellant. Bad behavior of one Hazrat Khan, a private security guard was also highlighted in one of the roznamchas and a report was submitted to the Administrator LR II by the Deputy Superintendent of Police, City-I Sub Division, Peshawar, to take action against him. It is not clear whether any action was taken against the private security guard, but record shows that the appellant was transferred from LR II on the complaint of hospital administration against him. Furthermore, the countersigning



officer for the PER of the appellant recorded adverse remarks in his PER as follows:-

*"PART-IV : Not yet fit for promotion.*

*PART-V : DSP Muslim Khan had a very average Performance. He was reported against by the head of Khyber Teaching Hospital and subsequently did not show any improvement while posted in Lady Reading Hospital. Moreover, he took any responsibility assigned to him very casually."*

The countersigning officer declared the quality of assessment made by the reporting officer as "Exaggerated". The adverse remarks were conveyed to the appellant on 20.09.2022, upon which his representation was filed/rejected.

7. Comments of the respondents produced before us show that several complaints against the appellant were received based on which adverse remarks were recorded in his PER. When asked to produce the complaints, the learned Deputy District Attorney as well as the departmental representative could not produce even a single complaint. The departmental representative stated that all the complaints were verbal and there was no record of any complaint in writing. He further stated that the appellant was directed to mend his ways upon which he was asked to produce any such direction to which he responded that those were verbal directions.

8. Perusal of PER of the appellant for the year 2021 shows that his reporting officer mentioned his overall grading as "very good" whereas the



counter-signing officer gave his remarks as "Average". The appellant was working under the control of the reporting officer who considered him a very good officer. If the countersigning officer was in disagreement with the reporting officer, he had to give some solid reasons. Comments of the Countersigning Officer in part-V of the PER show that he based his assessment on some report against the appellant while he was posted in the Khyber Teaching Hospital and that he did not show any improvement while posted at the LRH. Upon strong denial of the appellant regarding his posting at the KTH, the departmental representative was asked to provide any document to ascertain that the appellant was posted at KTH and that there were any complaints against him during his posting there, but no such document could be produced before us. The guidelines for filling up the PERs are clear when they state as follows:-

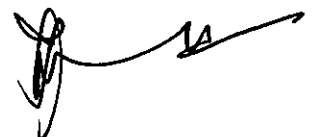
- *The Countersigning Officer should weigh the remarks of the RO against their personal knowledge of the Officer under-report, compare him with other officers of the same grade working under different Reporting Officers, but under the same Countersigning Officer, and then give their over all assessment of the Officer. In case of dis-agreement with the assessment done by the Reporting Officer, specific reasons should be recorded by the Countersigning Officers in Part-IV (2).*
- *Reporting Officer should ensure that proper counseling is given to the officer under report before adverse remarks are recorded.*
- *The Reporting and Countersigning Officers should be clear, direct, objective and unambiguous in their remarks. Vague impressions based on inadequate knowledge or isolated incidents should be*



*avoided. Reports should be consistent with the pen picture, overall grading and comparative gradings.*

9. In this case, we have noted that the countersigning officer did not stick to the guidelines, and while disagreeing with the reporting officer, he did not mention specific reasons with clarity and objectively, rather it was simply a comparison with his posting at KTH, where according to him there were complaints against the appellant. Although his posting at KTH has been denied by the appellant, but if we assume that he was posted there, at any time during his service, it was some period other than the year 2021 and the PER of every year is to be written independently, having no comparison with the previous year.


10. It was further noted that the reporting officer had not mentioned any negative point while initiating the PER of the appellant, rather he gave him a "very good" PER. If the countersigning officer had any reservations, he had to support his remarks with sufficient material, which in this case has not been done. The respondents failed to provide any record of adverse remarks in the PERs of the previous years. It was stated by the learned counsel for the appellant that no adverse remarks had ever been recorded, either by the reporting officer or the countersigning officer, in the past and that it was the first time that such remarks were recorded. The statement given by the learned counsel was not denied by the departmental representative present before us. Moreover as per guidelines, proper counseling has to be given to the officer under report before adverse remarks are recorded. When asked from the learned Deputy District



Attorney as well as the departmental representative about such counseling, then reply was in negative.


11. In view of the above discussion, the appeal in hand is allowed as prayed for . Cost shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 26<sup>th</sup> day of March, 2024.*

  
(FAREEHA PAUL)

Member (E)

\*FuzleSubhan P.S\*

  
(RASHIDA BANO)

Member(J)

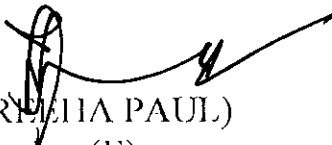


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26<sup>th</sup> Mar. 2024 01. Arbab Saiful Kamal, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Suleman, S.I (Legal) for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 08 pages, the appeal in hand, is allowed as prayed for. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26<sup>th</sup> day of March, 2024.*

  
(FARZEEN PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*