

ORDER

- 24<sup>th</sup> May, 2024
1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
  2. Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted. Adverse entries in the impugned ACR for the period from 27.01.2020 to 03.08.2020 are hereby expunged. Costs shall follow the event. Consign.
  3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24<sup>th</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

07. In view of the foregoing, the instant appeal is accepted. Adverse entries in the impugned ACR for the period from 27.01.2020 to 03.08.2020 are hereby expunged. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 24<sup>th</sup> day of May, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
MEMBER (E)

that the appellant has been condemned unheard and no opportunity of personal hearing was afforded to the appellant to clarify his stance;

05. Learned District Attorney contended that the impugned order dated 31.12.2020 and appellate order dated 25.07.2023 are in accordance with law, facts and rules, hence tenable in the eyes of law; that action and inaction of the respondents are legal; that there is no discrimination on part of the respondents because the appellant was found incompetent, ill-reputed and poor performing officer, therefore, respondent No. 1 reported the alleged adverse remarks against him in the ACR; that opportunity of personal hearing was afforded to the appellant, but he badly failed to rebut allegations leveled against him; that departmental appeal of the appellant was rejected on merit with convincing reasons; that the appellant has no cause of action and he wrongly challenged the legal orders of the respondents.

06. Perusal of record reveals that ACR for the period from 27-01-2020 to 03.08.2020 in respect of the appellant was reported as adverse by the reporting officer. The instructions regarding performance evaluation report clearly lay down that no adverse entry can be made unless civil servant is counseled, advised or warned but there is nothing in black & white to show that such counseling was done by the respondents. Record is also silent as to whether the appellant was afforded any opportunity of personal hearing or counseling which tentamounts to condemning him unheard. Stance of the appellant to the effect that such action was based on malafide of the respondents hold force as all his ACRs for his entire career are very good or good and there is no adverse entry in his entire career except the impugned ACR.

*remedy which this august Tribunal deems appropriate/proper  
may also be awarded in favor of the appellant.”*

02. Brief facts of the case are that the appellant joined Police Department on 01.07.1991. Through career progression he reached to the rank of Sub Inspector in the year 2016; that the RPO Swabi, communicated adverse remarks to the appellant in his ACR for the period from 27.01.2020 to 03.08.2020 vide order dated 31.12.2020. Feeling aggrieved, the appellant filed departmental appeal on 04.04.2022, which was rejected vide order dated 25.07.2023, hence preferred the instant service appeal on 22.08.2023

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 31.12.2020 & 25.07.2023 are against the law, facts, therefore, not tenable in the eye of law, hence liable to be set aside; that while communicating adverse remarks, the respondents were under legal obligation to call the appellant for counseling, but such opportunity was not afforded to the appellant, hence the impugned remarks are liable to be expunged being contrary to law and rule; that all the ACRs in respect of the appellant are either excellent or very good, except the impugned ACR, which shows malafide on part of the respondents; that through-out his carrier, no explanation of the appellant has been called or any complaint lodged against him, which negate the stance of the respondents; that action of the respondents is based on malafide, which is liable to be struck down;

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER (E)

*Service Appeal No. 1755/2023*

Date of presentation of Appeal.....22.08.2023  
Date of Hearing.....24.05.2024  
Date of Decision.....24.05.2024

Mukhtaj Ali Sub Inspector No. 427/MR Investigation Wing Police Station Kalo Khan District Swabi..... (Appellant)

**VERSUS**

1. The District Police Officer District Swabi.
2. The Regional Police Officer Mardan Region Mardan.
3. The inspector General of Police Khyber Pakhtunkhwa Central Police Office Peshawar.....(Respondents)

MUNFAT ALI,  
Advocate

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--- For appellant.

MUHAMMAD JAN,  
District Attorney

--- For respondents

**JUDGMENT**

**MUHAMMAD AKBAR KHAN, MEMBER (E):**-The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"On acceptance of the instant Service Appeal the impugned adverse remarks recorded in ACR started from the period of 27.01.2020 to 03.08.2020 dated 31.12.2020 and the appellate order dated 27.05.2023 may very kindly be set aside and adverse remarks recorded against the appellant may kindly expunged from the ACR of 2020 of the appellant. Any other*