

Service Appeal No.235/2023 titled "Ahsan Shahzad Vs. Judiciary"

ORDER

29th July. 2024

Kalim Arshad Khan, Chairman: Learned counsel for the appellant and Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Brief facts of the case, as per averments of the appeal, are that he was serving as Junior Clerk in the District Courts, Peshawar; that while performing his duties, vide impugned letter dated 07.12.2022, adverse remarks in his ACR for the year 2020-21 were recorded by the respondent No.3; that feeling aggrieved, he filed departmental appeal, but the same was not responded, hence, the instant service appeal.

3. Arguments heard. Record perused.

4. Perusal of record shows that the reporting officer has given good ACRs, however, the Countersigning Officer did not agree with the remarks of the Reporting Officer. The remarks are as under:

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

5. It is provided in the Guidelines that reporting officer is expected to counsel the officer being reported upon about his weak points and advise him how to improve and that adverse remarks should ordinarily be recorded when the officer fails to improve despite counseling. In the present case, the Reporting Officer has given good remarks, however, while not agreeing with the same, the Countersigning Officer

has given adverse remarks. While, there is nothing to show that such proper counseling was ever administered to the appellant. In view of the importance of this instruction, the Countersigning Officer should not only impart appropriate advice but also keep a record of such an advice having been duly administered.

6. Besides, reliance is placed on judgment of the Supreme Court of Pakistan reported as 2023 SCMR 877 titled "Director General, Intelligence Bureau Vs. Riaz Ul Wahab and others", wherein, the Supreme Court of Pakistan has held that:

"8. According to the relevant instructions cited above, as a general rule, an officer is to be apprised if his Reporting or Countersigning Officer is dissatisfied with his work, and the communication of such dissatisfaction with advice or warning should be prompt so that the officer may eradicate the fault and improve his performance. That is why it is emphasized that the Reporting or Countersigning Officers should not ordinarily record adverse remarks as to the performance of an officer without prior counseling. They are thus expected to apprise the officer concerned about his weak points and advise him/her how to improve, and to record the adverse remarks in the PER when the officer fails to improve despite counseling. The supervisor/ officers under whose supervision other officers work, must realise that the supervision does not mean cracking the whip on finding a fault in their performance, rather the primary purpose of the supervision is to guide the subordinates officers in improving their performance and efficiency, and that their role is more like a mentor rather than a punishing authority. As the purpose of counseling is to improve the performance of the officer and not to insult or intimidate him, the supervisory officers are also to see, having regard to the temperament of the officer concerned, whether the advice or warning given orally or in written form, or given publically in a general meeting of the officers or privately in a separate meeting with the concerned officer only, would be beneficial for the officer in improving his performance. The directions contained in the instructions,

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in this regard on paying great attention to the manner and method of communicating advice or warning should be adhered to. It must also be pointed out that such guidance, through counseling, for improving the performance and efficiency of a subordinate officer, can ultimately benefit the organization as it enables identifying and addressing performance issues before they become major problem problems, thereby, leading to increased productivity and better performance so that the organization's goals and objectives are effectively achieved.

9. *In the present case, the Countersigning Officer did not mention in the PERs that he had counseled the respondents for improving their performance nor did he justify his departure from the above general rule of making prior counseling before recording the adverse remarks. He has also not given the required specific reasons for his disagreement with the evaluation of the Reporting Officers. There was, thus, a gross violation of the instructions by the Countersigning Officer in recording the adverse remarks in the PERs of the respondents. The Tribunal has rightly expunged the same."*

7. When we see the instant case in the light of the above judgment, admittedly, the Countersigning Authority has not counseled the appellant. There is, thus, no justification in the remarks of the Countersigning Authority, which are, therefore, set aside.

8. In view of the above, instant service appeal is accepted and the impugned remarks communicated vide letter dated 07.12.2022 are set aside. Costs shall follow the event. Consign.

9. *Pronounced in open Court at Peshawar given under our hands and seal of the Tribunal on this 29th day of July, 2024.*



(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman