

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.462/2024

**BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN**  
**MRS. RASHIDA BANO ... MEMBER (J)**

**Iftikhar Ali S/O MianGul (SI 426/MR District Police Mardan), Village KalushahJajiarghon Shah Killi Tehsil TakhtBhai District Mardan.**

.... (Appellant)

**VERSUS**

1. The Inspector General of Police Khyber Pakhtunkhwa Central Police Officer, Peshawar.
2. Regional Police Officer Mardan.
3. District Police Officer, Mardan.

.... (Respondents)

Muhammad Irshad  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....27.03.2024  
Date of Hearing.....29.07.2024  
Date of Decision.....29.07.2024

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):** The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the appellant may please be restored to the position prior to 13.06.2021 with back service benefits and the adverse remarks in the ACR of appellant from 01.01.32021 to 31.12.2021 may please be expunged with classification from “C” to “A” as appellant has been declared innocent by the concern judicial magistrate Mardan and orders



of respondents bearing date 13.03.2024 No. S/458-460/24,211/ACR dated 08.06.2023 and 6171/PA dated 15.06.2023 may please be declared null and void and without lawful authority. Any other remedy which is deemed fit by this Hon'ble Tribunal in the interest of justice, may also be granted in favour of the appellant."

2. Brief facts of the case are that appellant while posted as Station House Officer at Police Station Toru in District Police Mardan was charged by a complainant in case FIR No. 684 dated 13.06.2021 under section 161/162/119-B/118-D Police Act, 2017 at Police Station Toru, Mardan on the basis of which he was placed under suspension and later on awarded punishment in shape of adverse remarks in his ACR for the period of 01.01.2021 to 31.12.2021 as "C". Feeling aggrieved, appellant filed departmental appeal, which was filed vided order dated 13.03.2024, hence present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

6. Appellant in the instant appeal seeks expunction of adverse remarks recorded in PER for the year 2021-2022. Perusal of record reveals that when appellant was posted at Police Station Toru, Mardan as SHO an FIR bearing No.684 dated 13.06.2021 was lodged against him U/S 161/162/119B/118D

Act 2017 and PPC Act in Police Station Toru, Mardan. Appellant was discharge in the said FIR vide 22.09.2021 by Judicial Magistrate Mardan. In view of situation appellant was given following adverse remarks in his PER for the year 2021-2022 communicated to appellant on 15.06.2023.

**“Is he honest. No.”**

**Remarks: He was found guilty of receiving two goats from extortion from a poor shepherd while he was posted in Police Station Toru (Mardan). An FIR was also registered against him.”**

7. Appellant was also awarded punishment of reduction in pay by one stage vide order dated 19.11.2021 which was set aside by this Tribunal vide order & Judgment in Service Appeal No.1210/2022 decided on 27.03.2024. Now appellant is given above mentioned remarks about the same incident/occurrence which is injustice particularly when appellant was discharged from the allegations leveled against him in FIR No.684, learned Judicial Magistrate vide discharge order dated 22.09.2021, directed the respondent for initiating proceeding U/S 182 PPC against the complainant of FIR No.684 namely Adil.

8. Otherwise according to clause 2.13(i)(ii) and 3.3(ii)(iv) of instructions contained in “A Guide to Performance Evaluation (Edition 2004) and verdict of apex court reported in 2023 SCMR 877 before recording adverse remarks in PER counseling or warning to Civil Servant is must. Relevant portion of above mentioned verdict is reproduced here for ready reference as under;

***“Instructions for the Countersigning Officers-***

***(i) The Countersigning Officers should weigh the remarks of the RO against their personal knowledge of the officer under report and***

then give their assessment in Part V. In case of disagreement, the Countersigning Officers should give specific reasons in Part V. Similarly, if the Countersigning Officers differs with the grading or remarks given by the Reporting Officer in Part III they should score it out and give their own grading by initialing the appropriate box.

(ii) The Countersigning Officers should make an unbiased evaluation of the quality of performance evaluation made by the RO by categorizing the reports as exaggerated, fair or biased. This would evoke a greater sense of responsibility from the reporting officers.

3.3 The following principles are laid down for guidance:

(ii) as a general rule in no case should an officer be kept in total ignorance for any length of time that his superiors after sufficient experience of his work are dissatisfied with him; in cases where a warning might eradicate or help to eradicate a particular fault, the advantages of prompt communication are obvious; where criticism is proposed to be withheld, the final authority to consider the report should record instructions, with reasons, according to the nature of the defects discussed as to the period for which communication is to be kept back;

(vi) great attention should be paid to the manner and method of communication in order to ensure that the advice given and the warning or the censure administered, having regard to the temperament of the officer concerned, may be most beneficial to him. The adverse remarks may be communicated in writing or verbally. In the latter case, the fact of communication should be recorded on the evaluation report and, if the officer so requests, the remarks should be given in writing;

(c) Civil service-----Performance Evaluation Report---  
Countersigning Officer and Reporting Officer---Prior counseling of  
subordinate officer---Requirement of prior counselling of  
subordinate officer before recording adverse remarks against him in  
his PER elaborated.


According to clauses 2.13(i)(ii) and 3.3(ii)(iv) of the Instructions contained in "A Guide to Performance Evaluation" (Edition 2004) published by the Establishment Division, 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

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*why it is emphasised that the Reporting or Countersigning Officers should not ordinarily record adverse remarks as to the performance of an officer without prior counselling. 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 counselling. The supervisory 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 counselling 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, in this regard, on paying great attention to the manner and method of communicating advice or warning should be adhered to.”*

9. Respondent had not issued any prior warning or counseling on this score too adverse remarks given in PER for the year 2021-2022 is not suitable in the eyes of law. Therefore, same is expunged. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29<sup>th</sup> day of July, 2024.

  
(RASHIDA BANO)  
Member (J)

  
(KALIM ARSHAD KHAN)  
Chairman

**ORDER**

29.07.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney alongwith Atta-ur-Rehman DSP Legal for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal in hand as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29<sup>th</sup> day of July, 2024.*



**(RASHIDA BANO)**  
**Member (J)**

\*M.Khan\*



**(KALIM ARSHAD KHAN)**  
**Chairman**