

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.460/2024

Date of Institution..... 28.03.2024
Date of Hearing..... 22.10.2024
Date of Decision..... 22.10.2024

Jamal Ullah Khan, Sub Inspector No. 364/MR, District Police Mardan.....(Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 13.03.2024 OF RESPONDENT NO. 1, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE LETTER DATED 08.06.2023 WHEREBY ADVERSE REMARKS WERE COMMUNICATED TO THE APPELLANT IN HIS ACR FOR THE PERIOD FROM 18.06.2021 TO 31.12.2021, HAS BEEN REJECTED/FILED.


PRESENT


1. Mr. Fazal Shah Mohmand, Advocate on behalf of the appellant present.
2. Mr. Naseer-Ud-Din Shah, Assistant Advocate General, for respondents present.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs. 100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 22nd day of October, 2024.


(Kalim Arshad Khan)
Chairman


(Muhammad Akbar Khan)
Member (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 460/2024

Date of presentation of Appeal.....28.03.2024
Date of Hearing.....22.10.2024
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Jamal Ullah Khan, Sub Inspector No. 364/MR, District Police
Mardan.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan.....(**Respondents**)

FAZAL SHAH MOHMAND,
Advocate

--- For appellant.

NASEER UD DIN SHAH,
Assistant Advocate General

--- For respondents

Service Appeal No. 459/2024

Date of presentation of Appeal.....28.03.2024
Date of Hearing.....22.10.2024
Date of Decision.....22.10.2024

Muhammad Tahir, Sub Inspector No. 104/MR, District Police Mardan
.....(**Appellant**)

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan.....(**Respondents**)

FAZAL SHAH MOHMAND,
Advocate

--- For appellant.

NASEER UD DIN SHAH,
Assistant Advocate General

--- For respondents

Service Appeal No. 461/2024

Date of presentation of Appeal.....28.03.2024
Date of Hearing.....22.10.2024
Date of Decision.....22.10.2024

Jamal Ullah Khan, Sub Inspector No. 364/MR, District Police
Mardan.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Mardan.....(Respondents)

 FAZAL SHAH MOHMAND,
 Advocate

--- For appellant.

NASEER UD DIN SHAH,
 Assistant Advocate General

--- For respondents

CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):-. Through this single judgment, we intend to dispose of the instant service appeal as well as connected Service Appeal bearing No. 459/2024 titled "Muhammad Tahir versus Provincial Police Officer Khyber Pakhtunkhwa, Peshawar & others" and Service Appeal bearing No. 461/2024 titled "Jamal Ullah Khan versus Provincial Police Officer Khyber Pakhtunkhwa, Peshawar & others", as common question of law and facts are involved in all these appeals.

02. Brief facts of the case are that the appellant joined Police Department on 24.09.1987. Through career progression he reached to the rank of officiating Sub Inspector on 10.07.2015; that the Regional Police Officer, Mardan, communicated adverse remarks to the appellant in his ACR for the period from 18.06.2021 to 31.12.2021 vide letter dated 8.06.2023. Feeling aggrieved, the appellant filed departmental appeal to respondent No. 1 on 26.06.2023 which was rejected vide order dated 13.03.2024, hence preferred the instant service appeal on 28.03.2024.

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 and

learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 13.03.2024 & letter dated 08.06.2023 are illegal, unlawful and void abinitio, 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; that the appellant has been condemned unheard and no opportunity of personal hearing was afforded to the appellant to clarify his stance;


05. Learned Assistant Advocate General contended that the order and letter issued by the competent authority as well as appellate authority are legal as per law and principle, hence liable to be maintained; that there is no discrimination on part of the respondents because the appellant was reported as "C" and not honest and the countersigning officer has also agreed with remarks that he was warned time and again to mend his ways and he is Incurrible. therefore, respondent 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 18.06.2021 to 31.12.2021, 01.01.2021 to 31.12.2021 & 01.01.2022 to 19.07.2022 in respect of the appellants were 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 appellants were afforded any opportunity of personal hearing or counseling which tantamounts to condemning the appellants unheard. Stance of the appellants to the effect that such action was based on malafide of the respondents hold force as all the ACRs for their entire career are very good or good and there is no adverse entry in their entire career except the impugned ACRs.


07. In view of the foregoing, the instant appeal as well as connected service appeals are accepted. Adverse entries in the impugned ACRs of the appellants 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 22nd day of October, 2024.*



(KALIM ARSHAD KHAN)

CHAIRMAN




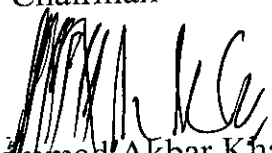
(MUTAMMAD AKBAR KHAN)

MEMBER (E)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 460/2024

Jamal Ullah Khan versus Provincial Police Officer, Khyber
Pakhtunkhwa, Peshawar and one other.

S. No. of Order & Date of Proceedings	Order or other proceedings with signature of Chairman/Member (s)/Registrar and that of parties or counsel where necessary
<p><u>Order-6</u> 22nd October, 2024</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Fazal Shah Mohmand, Advocate on behalf of the appellant present.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.3. Vide our detailed judgment of today placed on file, the instant service appeal is accepted. Adverse entry in the impugned ACRs of the appellant is hereby expunged. Costs shall follow the event. Consign.4. <i>Pronounced in open court at Peshawar and given under our hand and seal of the Tribunal on this 22nd day of October, 2024.</i> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p> <p style="text-align: right;"> (Muhammad Akbar Khan) Member (E)</p> <p>*Kamranullah*</p>