

**JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT**

Service Appeal No.18 of 2023

Alamgir Liaqat

Versus

The Registrar, Lahore High Court, Lahore & another

JUDGMENT

Date of hearing: 24.04.2024.

Appellant by: Rai Sajid Ali Kharal, Advocate.

Respondent No.1 by: Mr. Nauman Sarwar, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. / CHAIRMAN:-

Through instant appeal, appellant has assailed vires of order dated 20.10.2023, passed by respondent, whereby appellant's representation for expunction of remarks recorded in his Performance Evaluation Report ("PER") was declined.

2. Brief facts of the case are that vide letter dated 12.09.2023, appellant was communicated remarks recorded by the then District & Sessions Judge, Gujranwala, in his PER regarding period from 24.09.2022 to 31.12.2022. Appellant filed representation but the same was declined vide impugned order dated 20.10.2023. Hence, instant appeal.

3. Learned counsel for appellant submits that the impugned remarks were communicated as "advisory" but in fact the same are "adverse" in nature as the same relate to dignity and integrity of the appellant. He adds that appellant's work, conduct, dignity and integrity remained up to the mark in his entire service career, which is reflected from his PERs and even otherwise, the impugned remarks are vague and without reference to any particular instance justifying formulation of the

opinion, thus, same are liable to be expunged. He has placed reliance upon Noor Elahi v. Director of Civilian Personnel, Rear Air Headquarters, Peshawar and 2 others (1997 SCMR 1749) and Malik Azhar-ul-Haq v. Registrar, Lahore High Court, Lahore [2012 PLC (C.S.) 1208].

4. On the contrary, learned counsel for respondent submits that the remarks are advisory, and need not to be expunged. He adds that neither representation nor Service Appeal lies against such remarks. He has relied upon Government of the Punjab and another v. Ehsan ul Haq Sethi (PLD 1986 Supreme Court 684), Engineer Jameel Ahmed Malik v. Pakistan Ordinance Factories Board, Wah Cantt. through Chairman and others (2004 SCMR 164), Lahore High Court, Lahore through Registrar v. Muhammad Jaangir Khan Goraya (1999 SCMR 2117), Shaukat Javed Farooq, under Secretary Civil Secretariat, Lahore v. District and Sessions Judge, Lahore and others (1999 SCMR 2141) and Ch. Shabbir Hussain and others v. Registrar, Lahore High Court, Lahore and others (PLD 2004 Supreme Court 191).

5. Arguments heard. Available record perused.

6. Appellant is aggrieved of the remarks appearing in his PER for the period from 24.09.2022 to 31.12.2022, which according to him being “adverse remarks” are problematic for his service career whereas stance of respondent is that the remarks were “advisory” for improvement of the appellant. For ease of reference, the remarks in question are reproduced as under:-

Part-V

a) Pen Picture

“He is advised to run his office with dignity and integrity.”

7. The question for determination before us is whether the impugned remarks are “adverse” or “advisory” in nature. We are mindful of the fact that mere caption of the remarks is not the determining factor, rather nature and essence of the remarks

would lead to the conclusion as to whether these remarks are “advisory” or “adverse”. Adverse remarks indicate the defects or deficiencies in the quality of work or performance or conduct of a civil servant except the words in the nature of counsel or advice. Adverse remarks could be deciphered from the words used by the reporting officer in his remarks and the impact those words might have on the reputation and general image of the officer. Adverse remarks do not become advisory even if the reporting officer calls them advisory or the authority treats them so. Moreover, advisory remarks, at the time of promotion of the civil servant, would become adverse and carry stigma if it is found that despite the advice the officer did not make any improvement. Reference can be made to Government of the Punjab and Another v. Ehsanul Haq Sethi (PLD 1986 Supreme Court 684), Engineer Jameel Ahmed Malik v. Pakistan Ordinance Factories Board, Wah Cantt through Chairman and Others [2004 P L C (C.S.) 130 Supreme Court], Malik Azhar-Ul-Haq v. Registrar, Lahore High Court, Lahore [2012 PLC (C.S.) 1208 Punjab Subordinate Judiciary Service Tribunal] and Government of A.P. rep. by Chief Secretary v. Madanlal, IPS and another [2003(1) S.C.T.627].

In the case of Madanlal supra, Andhra Pradesh High Court observed that 'adverse remark ' means a remark, which indicates the defects or deficiencies in the quality of work or performance or conduct of an Officer, but does not include any word or words in the nature of counsel or advice to the Officer.

In the case of Malik Azhar-Ul-Haq supra, the appellant had prayed for expunction of remarks "*some stinking news about integrity of the appellant have started pouring in, he should be careful (advisory)*" recorded against him by the Inspection Judge. The Tribunal apparently by considering the words used by the reporting officer in his remarks and the impact those words might have on the reputation and general

image of the officer, considered those remarks to be adverse even though the word advisory was clearly written against them by the reporting officer.

8. We have perused the contents of PER in question and it is not evident that any counseling was made to appellant by the Reporting Officer to improve his performance. There is nothing on record to justify his departure from the above general rule of making prior counselling before recording the adverse remarks. It is noteworthy that instructions contained in the PUNJAB ESTACODE Edition 2019, BOOK VII Captioned as “Instructions about Confidential Reports” and under the heading Ancillary Instructions, have not been followed in this case. The matter of prior counselling before adverse remarks is mentioned vide D.O. No. 6/1/84-PDII, Dated 12th February 1984 from Establishment Secretary, Cabinet Secretariat, Government of Pakistan, Rawalpindi, to the Chief Secretary to Government of the Punjab, Circulated vide Endorsement No. SOR-IV(S&GAD) 14-13/78(P) dated 16th May 1984 with the subject: WRITING OF ANNUAL CONFIDENTIAL REPORTS. It dealt with counselling under Para 2(2) which is reproduced as under:

“(2) Counseling

Adverse remarks are often recorded by the reporting officers without prior counseling to the officer reported upon. This is contrary to the existing instructions and is in fact, a reflection on the reporting officer. They are expected to counsel an officer about his weak points and advise him how to improve. Adverse remarks should normally be recorded only when the officer fails to improve despite counseling.”

9. It is well-settled that the Reporting or Countersigning Officers are obliged to offer counselling as to the performance of an officer apprising his weak points and advise him/her how to improve, and if the officer fails to improve despite counselling then adverse remarks may be recorded in the PER. It is up to the supervisory officers to see whether the counselling, advice or warning is to be 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. The primary purpose of the supervision is to guide the subordinate officers in improving their performance and efficiency, and that their role is more like a mentor rather than a punishing authority. 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. The object of counselling is to improve the performance and efficiency of a subordinate officer, which can ultimately benefit the organization as it enables identifying and addressing performance issues before they become major problems. The Supreme Court of Pakistan in Director General, Intelligence Bureau v. Riaz-ul-Wahab and others (2023 SCMR 877), while discussing the rationale behind the writing of PER, has observed as under:

“5. PERs are the most important documents in the service record of civil servants. They help the competent authorities in making informed decisions with regards to personnel administration matters, such as, selections for training, appointments / transfers, promotions, confirmations or screening of civil servants. An officer's promotion and retention in service mostly depends on what has been recorded in his/her PER. It is, therefore, essential that the PERs are written by the Reporting and Countersigning Officers most carefully and responsibly. The PER forms that elaborate the criteria against which the performance of a subordinate officer is to be evaluated, and the instructions issued with regards to properly recording the PERs, are designed to ensure reporting on an officer's strong and weak points more objectively, as only objective reporting can effectively serve the true purpose of such reports. If the Reporting or the Countersigning Officer is partial, his opinion is likely to cause incalculable damage to the officer reported upon, and if a PER is ambiguous or carelessly written, it would not serve the true purpose of recording PERs. Therefore, the Reporting and Countersigning Officers should evaluate the performance of the officer reported upon in a detached and objective manner, in accordance with the instructions issued on the subject.”

10. In view of the foregoing, we are of the candid opinion that remarks in question are “adverse” and cannot be considered “advisory” by any stretch of imagination. The available record does not provide basis or direct evidence for the remarks i.e. *he is advised to run his office with dignity and integrity* and even the said remarks were recorded without prior counselling, thus, the same are unsustainable. The case law, cited by learned counsel for respondent, being distinguishable, is not attracted to the facts and circumstances of this case.

11. Resultantly, this appeal is **allowed** and impugned order is set aside. Consequently, impugned remarks in appellant’s PER for the period from 24.09.2022 to 31.12.2022 stand expunged.

(Muhammad Sajid Mehmood Sethi)
Chairman

(Abid Husain Chattha)
Member

(Rasaal Hasan Syed)
Member

APPROVED FOR REPORTING

Chairman

Sultan