

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

Service Appeal No.10 of 2003

S.M. Iqtidar-ul-Hassan Bukhari

Versus

Lahore High Court, Lahore through its Registrar, etc.

J U D G M E N T

Date of hearing:	22.06.2023.
Appellant by:	Mr. Mahmood Ahmed Qazi, Advocate.
Respondents by:	Mr. Ghulam Hussain Awan, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. / MEMBER:-

C.M. No.01 of 2005

This is an application for placing on record necessary documents. For the reasons stated in the application supported by an affidavit, this C.M. is allowed subject to all just and legal exception and the documents annexed with the application are ordered to be placed on record.

Main Case

2. Through instant appeal, appellant has assailed vires of order dated 06.05.2003, passed by respondent No.1, whereby appellant's representation for expunction of remarks recorded in his Annual Confidential Report ("ACR") for the period from 01.01.2001 to 30.04.2001 was declined.

3. Brief facts of the case are that vide letter dated 24.02.2003, appellant was communicated remarks recorded by the then District & Sessions Judge, Gujrat, in his ACR regarding period from 01.01.2001 to 30.04.2001. Appellant

filed representation but the same was declined vide impugned order dated 06.05.2003. Hence, instant appeal.

4. Learned counsel for appellant submits that the comments “*his integrity was not above board*” and “*reported to be corrupt*” in its nature and essence, are not only a stigma on future career of appellant but also constitutes adverse remarks. Adds that these remarks, even otherwise, are vague and without reference to any particular instance justifying formulation of the opinion, thus, same are liable to be expunged. He contends that in the ACR, he is held to be average officer which cannot be treated as adverse remarks as per the well settled principle of law. He has placed reliance upon Malik Azhar-ul-Haq v. Registrar, Lahore High Court, Lahore [2012 PLC (C.S.) 1208].

5. On the contrary, learned Legal Advisor of respondent No.1 submits that adverse remarks were also recorded in the ACRs of the appellant for the period i.e. 01.1.2000 to 05.9.2000, 04.8.1997 to 31.12.1997 and 22.2.1995 to 23.10.1995 wherein the integrity of the appellant was recorded not being above board and not enjoying good reputation. Adds that officer was duly warned by the Reporting Officer to improve his work and conduct as he decided 5 cases instead of 24 as per Standing Instructions but no improvement was found in work and conduct of the appellant, hence, instant appeal is liable to be dismissed.

6. Arguments heard. Available record perused.

7. Appellant is aggrieved of the remarks appearing in his ACR for the period from 01.01.2001 to 30.04.2001, which according to him being “adverse remarks” are problematic for grant of service benefits whereas stance of respondent No.1 is that the appellant has history of adverse remarks in his ACRs. For ease of reference, the remarks in question are reproduced as under:-

PART-Va). **Pen Picture**

"He was not enjoying good reputation. About it, with reference to letter No.567/RHC/1-C, dt: 04.5.2001, special report about work and conduct of the officer was sent by me:

i) His integrity was not above board.

ii) He was not efficient."

b). **Counseling**

"Yes. No improvement was found."

f). Usefulness for further retention in service = Not useful.

PART-VI

b). **Fitness for promotion** = Not yet fit for promotion.

c). **Integrity** = Reported to be corrupt.

PART-VIIa). **REMARKS OF THE COUNTERSIGNING OFFICER**

No reason to differ with the opinion of the reporting officer.

It is evidently clear that the above observations are "adverse remarks" and we are unable to find any material from the record to satisfy us that the remarks are supported by evidence. It is admitted position that no complaint of corruption, in writing had been received against the appellant. Describing a person as reported to be corrupt is a very serious allegation which can spoil his whole career as a civil servant. Therefore, while examining ACRs, where a person is dubbed as corrupt we have to see as to whether there was any cogent material or justification for recording the remarks. It is true that ordinarily, in recording remarks or opinions, full reasons need not be given but the conclusions have to be based on facts and when in contest, as in this case the concerned officer should have plausible explanation to justify his conclusions. In the case in hand, needful was not done. The Reporting Officer must not be evasive in his remarks and avoid exaggerations. He should also state with distinctiveness whether any of the defects reported have already been brought to the notice of the officer concerned and also whether he has or has not taken steps to

remedy them. Reliance is placed on Muhammad Ashraf Shagufta, Additional District and Sessions Judge, Sialkot v. Lahore High Court through Registrar and another (1995 PLC(C.S.) 1165), Moor 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).

8. Record shows that in the ACR for the period in question, overall performance of the appellant was average which as per well settled principles of law cannot be treated as adverse remarks unless same are treated so and duly communicated to appellant. This was not so in instant case as letter dated 08.1.2003 regarding communication of remarks is not showing average as adverse remarks. Refence can be made to Pakistan Broadcasting Corporation through D.G. H.Q., Islamabad and another v. Nasiruddin (1997 SCMR 1303), Muhammad Afzal Javed, Additional District and Sessions Judge, Lahore v. Lahore High Court, Lahore through Registrar, Lahore High Court, Lahore and 2 others (2003 PLC(C.S.) 1046) and Shakti Ram Rathore v. Federation of Pakistan and others (2009 SCMR 259). The contention of learned counsel for respondent that appellant could not achieve requisite number of contested cases does not support the adverse entries regarding work of appellant as overall grading/performance has been shown as average.

9. Needless to say that an officer is to be informed if his Reporting Officer or Countersigning Officer is not satisfied with his work and the communication of such dissatisfaction with advice or warning should be prompt so that the officer may exterminate the fault and improve his performance. The Reproting Officer should not record adverse remarks of a civil servant unless proper counselling or advice of his performance is communicated. The civil servant must be apprised his weak points and advised to improve and then adverse remarks should

Service Appeal No.10 of 2003

be recorded if the concerned civil servant failed to improve despite counseling. As the purpose of counseling is to improve the performance of the officer and not to insult him and the advice given orally or in written form would be beneficial for the officer improving his performance. The guidance and advice to subordinate officer can ultimately benefit the organization. Reliance is placed on Director General, Intelligence Bureau v. Riaz-ul-Wahab and others (2023 SCMR 877).

10. Resultantly, this appeal is **allowed** and impugned order is set aside. Consequently, impugned remarks stand expunged.

(Mirza Viqas Rauf)
Chairman

(Muhammad Sajid Mehmood Sethi)
Member

Waseem