

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-3256 - 2009

Titled ARSHAD MEHMOOD KHAN vs O-G-D-C.L, ETC,

- (a) Judgment approved for reporting Yes / ~~No~~
- (b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made. Yes / No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).


Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C


JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO.3256 OF 2009

ARSHAD MEHMOOD KHAN VS. O.G.D.C.L, ETC.

Date of Decision:


13-02-2019

Petitioner By:

Ch. Imran Ali, Advocate.

Respondents By:

Mr. Mushtaq Hussain Bhatti, Advocate.

JUDGMENT

MUHAMMAD ANWAR KHAN KASI, J.: Brief facts for the disposal of this petition are that the petitioner as an employee of OGDCL had been earning good/very good reports since 2001, but for the year 2006-2007, the respondent No.2/Countersigning Officer passed adverse remarks on the PER forwarding by the Reporting Officer. He claims that during 26 years of his service all the ACRs were up to the mark, but due to malafide intentions the counter signing officer namely Najam Kamal Haider, Executive Director (HR) made adverse entries.

2. It is alleged that his PER was worsened with malafide intentions to promote his junior Muhammad Riaz Khan. It is further alleged that the Countersigning Officer had intentionally concealed the evaluation report till the promotion of Muhammad Riaz Khan and, thereafter, the PER remarks were communicated to him



on 03.09.2007, though it was written on 30.07.2007. It is stated that the petitioner submitted representation on 02.10.2007, which was not decided within 30 days and was decided on 08.10.2009. The petitioner, therefore, prayed that the adverse remarks be declared illegal, mala fide and the respondents be directed to expunge the adverse remarks. Consequently, he be given promotion to the post of G.M (EG-VIII) w.e.f 01.07.2007.

3. The petitioner relied upon case law reported in 2011 SCMR 1912, wherein it was held that employees of OGDCL being governed by statutory rules have the remedy of filing Constitution Petition before the High Court. Learned counsel also cited the case laws reported in 2002 PLC(C.S.) 1480, 2003 PLC (C.S.) 1046 and 2003 PLC (C.S.) 1092, whereby adverse remarks were directed to be expunged from his dossier and petitioner was deemed to be promoted to the next higher grade with all back benefits.

4. The petition was contested by the respondents through parawise comments, wherein the maintainability of the petition was challenged on the ground that the relationship between the parties is that of master and servant and this court has no jurisdiction over the matter.

5. On merits, it was contended that performance of an officer rated good does not acquire perpetuity and the Countersigning Officer is fully competent to disagree



with the rating of the Reporting Officer. It was however admitted in para 11 of the parawise comments that the petitioner had submitted his representation on 02.10.2007, and it was decided on 08.10.2009, with the delay of 2 years. The delay has been explained by stating that the Countersigning Officer had retired.

6. The respondent cited the authorities reported in 1971 SCMR 566 and an unreported judgments of this Court passed in Writ Petitions 2496/2006, 77/2008, 3344/2006 and 1036/2008, wherein it was held that the rules of OGDCL are non-statutory and the High Courts have no jurisdiction over the matters.

7. Heard and record perused.

8. Admittedly the petitioner had earned good/very good ACRs / PERs till 2005-06. The disputed PER of 2006-07 was also forwarded by the Reporting Officer as very good and finding him fit for accelerated promotion, but the Countersigning Officer rated him as average and considered him not fit for promotion. The said remarks were not conveyed to the petitioner immediately, within 15 days under Rule 45 (C) (2) of OGDCL Employees Service Rules and were communicated to him vide letter dated 03.09.2007.

9. Record also reveals that the departmental appeal, against the adverse remarks, was received by the respondent on 02.10.2007, but it was decided on

21.

08.10.2009 and that too without assigning any reason for the dismissal of his departmental appeal.

10. The explanation given in the parawise comments is absolutely not relevant, because the departmental appeal was not to be decided by the Countersigning Officer and, therefore, his retirement has got nothing to do with it because the appeal was to be decided by the Chairman / CEO, OGDCL. It is also noted that the date of retirement of Countersigning Officer has not been mentioned.

11. The record verifies that the petitioner had been earning upto the mark reports and the respondents have nowhere alleged that earlier to 2006-07 or after that period any adverse remarks were communicated to him.

12. The fact about the communication of adverse remarks after the statutory period cannot be lightly ignored and at the same time delayed decision on his departmental appeal was absolutely illegal and unjustified. The respondent failed to justify the entry of adverse remarks by the Countersigning Officer, who in the past had given very good reports to the petitioner and, therefore, the adverse remarks made by the Countersigning Officer do not seem to be justified.

13. All these facts lead to the conclusion that the authorities had not been following the rules in strict sense of law and had been violating the same without



any justifiable reason. The officers on the helm of affairs are under obligation to follow the law and rules and also to protect fundamental rights of the employees, who look towards them as their guardians and protectors.

14. As regards the jurisdiction of this Court is concerned, the Hon'ble Apex Court in 2011 SCMR 1912 has very categorically decided that the employees of OGDCL can avail the remedy of Constitution Petition before the High Court, because its rules are statutory.

15. In view of above, the writ-petition is accepted and the adverse remarks for the year 2006-07 given by the Countersigning Officer (Respondent No.2) are declared unjustified and are expunged from the PER of 2006-07. Consequently, the petitioner is directed to be promoted as GM (EG-VIII) with back benefits from the date, when his juniors promoted. However, there shall be no order as to costs.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

Mirza Amer Baig.

Approved for reprinting.