

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Shahid Waheed

C.Ps. 3447 to 3450/2022

*(Against four judgments of Federal Service Tribunal, Islamabad
all dated 16.06.2022, passed in Appeals No.62(R)CS, 417(R)CS,
114(R)CS and 115(R)CS of 2022)*

Director General, Intelligence Bureau (*In all cases*)

..... **Petitioner**

Versus

Riaz-ul-Wahab & another (*In CP 3447 & 3448/2022*)
Surkharu Khan & another (*In CP 3449 & 3450/2022*)

..... **Respondents**

For the petitioner: Raja M. Shafqat Khan Abbasi, DAG.
Mrs. Ayesha Wani, Joint Secretary,
Mr. Amin Tareen, Deputy Secretary,
Mr. Sajid-ul-Hassan, Section Officer,
Establishment Division, GOP.

For the respondents: Mr. Riaz-ul-Wahab (*In person*)
Mr. Surkharu Khan (*In person*)

Date of hearing: 07.02.2023

ORDER

Syed Mansoor Ali Shah, J.- The petitioner seeks leave to appeal against four judgments of the Federal Service Tribunal, all dated 16.06.2022 ("impugned judgments"), whereby the Tribunal, while allowing the appeals of the respondents, has expunged the adverse remarks recorded by the Countersigning Officer in their Performance Evaluation Reports ("PERs") of certain periods and restored the assessment of their performance made by the Reporting Officers.

2. Briefly, the facts of the case are that the respondents, Riaz-ul-Wahab and Surkharu Khan, joined the Intelligence Bureau as Assistant Directors (BS-17) in 2001 and 2003 respectively, and having an unblemished and meritorious service record, they were promoted as Deputy Director (BS-18) and Director (BS-19) in due course. In the PERs of the respondent, Riaz-ul-Wahab, for the periods of about three months of 2019 and of about nine months of 2020, his Reporting Officer evaluated his performance as "very good" and "outstanding" and also recorded him as "fit for promotion"; and in the PERs of the respondent,

Surkharu Khan, for the periods of about three months of 2018 and of about six months of 2019, his Reporting Officer evaluated his performance as "good" and "very good" and also recorded him as "fit for promotion". However, their Countersigning Officer downgraded their performance evaluation as "average" and also declared them "unfit for promotion". The respondents preferred departmental appeals against the remarks of the Countersigning Officer. The appeals of the respondent, Riaz-ul-Wahab, were not responded to while that of the respondent, Surkharu Khan, were rejected. They, therefore, filed appeals before the Tribunal, which were allowed through the impugned judgments and the remarks recorded by the Countersigning Officer were expunged while the assessments of their performance made by the Reporting Officers were restored. Hence, the petitioner has filed the present petitions for leave to appeal.

3. During the hearing, we called the representative of the Establishment Division, Government of Pakistan, to explain to the Court the obligations of a Countersigning Officer in the matter of recording adverse remarks in the PER of a subordinate officer, especially when he disagrees with the evaluation recorded by the Reporting Officer. Mrs. Ayesha Wani, Joint Secretary, Establishment Division has appeared and referred us 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. She explained that as per the said instructions, if the Countersigning Officer disagrees with the evaluation of the Reporting Officer, he has to give reasons for the same, and before recording adverse remarks in the PER, the Reporting Officer and the Countersigning Officer, as the case may be, should, as a general rule, first do counselling of the officer concerned by either giving advice or administering a warning to the officer. The instructions referred to by her are reproduced here for ready reference:

2.13. 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 initialling 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.

Instructions Regarding Adverse Remarks-

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;

(Emphasis added)

The respondents have asserted that no advice or warning was ever given to them by the Countersigning Officer before recording the adverse remarks, and there is nothing on the record of the case to controvert their said assertion.

4. We have heard the learned counsel for the petitioner and the respondents in person, read the cases cited by them and the relevant instructions on the subject, and have also examined the record of the case.

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.¹ 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

¹ A Guide to Performance Evaluation (Edition 2004), Establishment Division, Government of Pakistan, SECTION 1.

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.²

6. According to “Performance Management in the Public Administration – Seven Success Factors” published in 2021,³ the seven success factors to enhance performance management in the public sector include; improving manager judgment and diversifying the sources of evaluation for performance appraisals to ensure objectivity and fairness in assessment, such as through 360-degree evaluations⁴ and by acknowledging and addressing bias; and enabling staff performance through adequate opportunities for growth and development, such as through regular feedback and coaching. Therefore, much importance is extended to proper and effective performance appraisals and assessment of employees in public administration, which in Pakistan is mainly undertaken through recording PERs, for successful performance management in public administration as a means to increase public sector productivity. This further necessitates that recording of PERs must be undertaken with complete objectivity and fairness, and with a view to improve individual and organizational productivity.

7. It is true that the evaluation of the performance of a subordinate officer by his Reporting or Countersigning Officer, primarily being a matter of personal assessment based on the direct observation of the work of the officer concerned, is not to be usually interfered with by the Tribunal or this Court unless malafide with full particulars, or the gross violation of the instructions, on the part of the Reporting or Countersigning Officer, as the case may be, is shown.⁵ In the present case, the Tribunal has interfered with and expunged the remarks recorded by the Countersigning Officer mainly on the ground of gross violation of the instructions on the subject of recording adverse remarks in PERs.

8. According to the relevant instructions cited above, as a general rule, an officer is to be apprised if his Reporting or Countersigning Officer is dissatisfied with his work, and the

² Govt. of Punjab v. Ehsanul Haq Sethi PLD 1986 SC 684 (5-MB).

³ <https://openknowledge.worldbank.org/bitstream/handle/10986/35921/Performance-Management-in-the-Public-Administration-Seven-Success-Factors.pdf>.

⁴ These include feedback from supervisors, peers, clients, and subordinates.

⁵ I.G.P. v. Altaf Majid 1994 SCMR 1348; Noor Elahi v. Director of Civilian Personnel 1997 SCMR 1749.

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 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.⁶ 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. It must also be pointed out that such guidance, through counselling, for improving the performance and efficiency of a subordinate officer, can ultimately benefit the organization as it enables identifying and addressing performance issues before they become major problems, thereby, leading to increased productivity and better performance so that the organization's goals and objectives are effectively achieved.⁷

9. In the present case, the Countersigning Officer did not mention in the PERs that he had counselled the respondents for improving their performance nor did he justify his departure from the above general rule of making prior counselling before recording the adverse remarks. He has also not given the required specific reasons for his disagreement with the evaluation of the Reporting Officers. There was, thus, a gross violation of the instructions by the Countersigning

⁶ A Guide to Performance Evaluation (Edition 2004), Establishment Division, Government of Pakistan, SECTION 1.

⁷ Rakiful Islam and Shuib bin Mohd Rasad, Employee Performance Evaluation by the AHP: A Case Study, Asia Pacific Management Review (2006) 11(3), 163-176.

Officer in recording the adverse remarks in the PERs of the respondents.
The Tribunal has rightly expunged the same.

10. For the above reasons, we find no legal flaw in the impugned judgments of the Tribunal. The present petitions are meritless. They are, therefore, dismissed and the leave to appeal, declined.

Judge

Judge

Islamabad,
07th February, 2023.
Approved for reporting
Iqbal

Judge