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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1223/2001

New Delhi, this the 18th day of *March*, 2002 (*18.3.2002*)

HON'BLE MR. GOVINDAN S.TAMPI, MEMBER (A)

N.S. Dubey
Superintendent
Service TAX Division
Central Excise, Delhi-1
CGO Complex
New Delhi.

... Applicant

(By Advocate: Ms. Mamta Jha with Shri Rohit,
learned proxy counsel for Dr. Surat
Singh)

V E R S U S

1. Union of India
through Finance Secretary (Revenue)
North Block,
New Delhi.
2. Commissioner of Central Excise
Central Revenue Building
ITO, IP Estate
New Delhi.
3. Mrs. Prachi Sawroop
Dy. Commissioner,
Central excise, MOD-II,
37, Nehru Place,
New Delhi-110024.
4. Shri V.K. Goel
Addl. Commissioner,
I.C.D. Tughlakabad,
New Delhi.

... Respondents

(By Advocate: Shri R.R. Bharti)

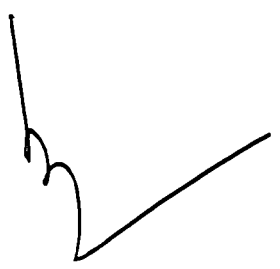
O R D E R (ORAL)

Challenge in this OA, filed by Shri N.S. Dubey, Superintendent of Central Excise, Delhi is directed against adverse entries in his ACR for the period 1998-99.

2. Heard Ms. Mamta Jha with Shri Rohit, learned proxy counsel for Dr. Surat Singh, learned counsel for the applicant and Shri R.R. Bharti, learned counsel for the respondents.
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3. The applicant, who joined in the Central Excise Collectorate (now Commissionerate) in December 1981 as Inspector became a Superintendent on 30.9.1997. He had all the while highly creditable record but suddenly in his ACR for the year 1998-99 adverse remarks were entered, which were communicated to him on 5.5.1999. His representation against the adverse entries on 27.5.1999 addressed to the Commissioner of Central Excise succeeded partially and the remarks about his integrity being doubtful were deleted while retaining the other remarks. This was communicated on 10.11.1999. His further representation to the Commissioner on 14.11.1999 was rejected on 20.12.1999, whereafter he filed the appeal to the President of India on 10.1.2000, which was turned down on 10.3.2001. Hence, this OA.

4. The grounds raised in this OA are that : (i) recording of adverse entries in his ACR was violative of Articles 14, 16, 19 and 20 of the Constitution of India; (ii) having had a consistently a good record for the first 16 years, on account of which he was promoted as Superintendent in 1997, there could not have been any sudden fall in his performance warranting any adverse entry; (iii) the respondents have not followed the guide-lines issued by the Govt. of India from time to time on writing the ACRs; (iv) the respondents have not realised that ACRs were



meant as tools for performance appraisal and the same should be used in an objective, impartial and fair manner so that the officer who is reported upon excels himself in devotion to duty, honesty, integrity etc. When the adverse remarks about the applicant's "doubtful integrity" has been withdrawn by the respondents, the other remarks should also follow suit. There was no reason for the retention of those remarks any longer in the ACR. The application should, therefore, succeed, is what the applicant and his learned counsel pray.

5. In the reply filed by the respondents, the facts as mentioned by the applicant are not disputed. However, the averments made by him are contested by the respondents. It is indicated that no portion of the adverse remarks from the ACR relating to integrity was expunged, but it was merely treated as non-existent as they have been made in the wrong column 7 (c). The fact that one portion has been treated as non-existent does not make the other portions also equally non-existent or irrelevant. The respondents had followed all the procedures with regard to the recording, reviewing, and communicating all the adverse entries in the performance appraisal report. The remarks recorded had been based on adequate documentary evidence. It is not correct to state that the applicant's performance was not seen by the reporting/ reviewing officer correctly. The above and the fact that certain remarks regarding the integrity of the

officer was treated as non-existence shows that the respondents were more than fair in dealing with the applicant's case. Shri R.R. Bharti, who represented the respondents reiterated the points made by them in the reply and stated that this OA did not warrant any interference by the Tribunal.

6. I have carefully considered the matter. In the ACR of the applicant, the following remarks are found to have been entered for the year 1998-99:-

"Col. 6: Discipline

"The officer is prone to unprovoked outburst against Senior Officers. Headquarters (Admn.) already seized of the matter (Poor)."

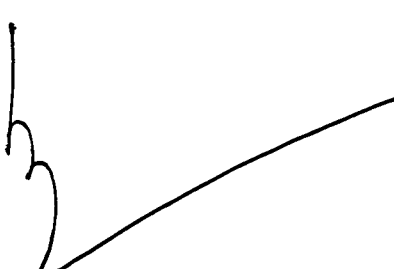
Col. 7(a) : Other observations, if any

Mention here any other factors with special mention e.g. health, family problems, indebtedness, addition to drink and gambling, temperament, resourcefulness etc. which have a bearing on the officer's performance."

"As mentioned in Col.6"

Though certain adverse remarks were originately entered in the Column 7 (c) on the integrity on the applicant, as the same have been treated as non-existent. They are, therefore, not being now considered. The applicant's plea is that having had over 16 years of unblemished record of service which saw him being promoted from the rank of Inspector, Central Excise to that of Superintendent, there could not be any justifiable reason for the sudden fall in his performance or performance appraisal. According to him, he has had even record of satisfactory service which has been

marred for the first time of the adverse entries. I cannot agree. Performance appraisal of every year is specific with reference to the performance of a particular reporting year and, therefore, to say that the same shall be uniform through-out the career of an individual or that there shall not be any change in the performance appraisal over the years, is fallacious. It is possible that a person having had a good record might suddenly find himself baset with a low performance gradient and resultant performance appraisal. If such is the case, the previous good entries perse would not save his case. On perusal of the remarks communicated, it is noted in column 6 relating to discipline that the applicant is prone to unprovoked outburst against senior officers and that the Headquarters (Admn.) was already seized of the matter. The above being a remark given by the officer who was Supervising his is work during the relevant year, there was no ground for interference the same and the Tribunal is not expected to act as a appellate authority in such matters. However, in column 7 (a) dealing with factors calling for special mention like health, family problems, indebtedness, addiction to drink and gambling, temperament, resourcefulness etc., the reporting officer has only stated "as mentioned in Column 6". This shows that reporting officer had not at all applied his mind but had only mechanically repeated his observation in earlier column without any relevance to the factors which



(6)

are sought to be commented upon. This cannot be accepted and has to be set aside as having been written without any basis or application of mind.

7. The OA in the above circumstances succeeds partially and is accordingly disposed of. The remarks communicated in Column 7 (a) which reads "as mentioned in Column 6." are directed to be expunged. Remarks in Column 6 are left untouched. No costs.

(GOVINDAN S. TAMPI)
MEMBER(A)

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