

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1575/
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DATE OF DECISION 9.8.1989

Shri Dharam Pal Applicant (s)

Shri R.R. Rai Advocate for the Applicant (s)

Versus

Union of India & Ors Respondent (s)

Shri P.P. Khurana Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. L.H.A. REGO, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE SHRI L.H.A. REGO, MEMBER (A)

The applicant herein prays, that the impugned Order dated 9.6.1988 passed by the respondent (R) 2, conveying to him, that the President of India, has rejected his representation dated 21.12.1987, in regard to quashing the adverse remarks entered in his Annual Confidential Report (A.C.R.) for the Reporting Year 1983, be set aside and that he be granted such relief, as deemed fit and proper, under the circumstances of the case.

2. The facts in brief, are as follows:

The applicant entered service in the Collectorate of Central Excise and Customs, New Delhi, on 12.2.1981, as Inspector of Central Excise. By his letter dated 11.9.1984 (Annexure B) R-2 conveyed to the applicant, through the Deputy Collector of Central Excise, Faridabad, the adverse remarks entered in his A.C.R. for the year 1983. He submitted a representation thereon to R.2 according to Annexure C (which does not bear any date) for expunging these remarks. The same was rejected by the latter on 28.3.85 (Annexure D) by a brusque and non-speaking order. The applicant thereon, filed a

mercy petition to the President of India, on 21.12.1987 (Annexure E) through proper channel, with a request, that the adverse remarks entered in his A.C.R. for the year 1983, be expunged. The same was rejected by the President, as conveyed by R.2, by his impugned letter dated 9.5.88 (Annexure A).

3. Aggrieved, the applicant has come before this Tribunal, for justice.

4. The respondents have countered the application by their written statement. The applicant has also filed a rejoinder thereto.

5. Shri R.R. Rai learned counsel for the applicant contended, that the adverse remarks were communicated to his client after a lapse of 8 months and therefore, these adverse remarks have become null and void in the light of ^{the} decision ~~by~~ by the High Court of Judicature, New Delhi, in 1979-SLJ-727 (Shri Gita Ram Gupta Vs. Union of India); that his entire service record, prior to 1983 was without blemish; that according to the instructions of the Government of India, Ministry of Home Affairs in their O.M. dated 31.10.1961, every employee should be clearly given to know, defects in his performance, promptly, to enable him to overcome the same; that there is no basis whatsoever, for entry of the impugned adverse remarks against him in the said A.C.R.; that these adverse remarks were contradictory; that the Reporting Officer did not objectively assess his work-performance; that bland remarks such " Needs improvement ", could not in any manner enlighten his client, as to in what respect precisely, he was deficient in his work and as to how he could overcome the same; that these adverse remarks were entered in his A.C.R. on account of prejudice and malice by the Reporting Officer; and that both R. 2 as well as the President of India, had rejected his representation by a non-speaking order, without assigning any reasons, ~~xxx~~ which was contrary to the dicta ⁱⁿ 1982-(1)-SLJ-207 (Dr. Gopeswar Dutta Vs. Union of India).

6. Shri Rai also called in aid the decisions in the following cases to substantiate his contention:-

(i) 1978-(1)-SLR-829-Orisa (Madan Mohan Khatua Vs. State of Orissa and other States;

(ii) 1987-ATR-(2)-CAT-360 (E.G. Nambudiri Vs. Union of India and others.

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(iii) 1987-ATR-(2)-CAT-510 Shri Krishan Lal Sharma Vs.
Union of India & Ors.

The ratio in the above catena of decisions, has been given in detail in an analogous case viz. O.A.No. 1819/88 (Shri J.N. Bhatia Vs. Union of India) in which, the very same counsel for the applicant had appeared.

7. In the end Shri Rai urged, that the adverse remarks entered in the A.C.R. of his client, for the year 1983, were without basis and therefore called for expunction.

8. Shri P.P. Khurana, learned counsel for the respondents rebutting the above contentions of the applicant, sedulously argued, that the A.C.R. of the applicant for the year 1983 was written and reviewed by the concerned authorities objectively, taking duly into account various aspects of his work and performance. He denied the allegations of the applicant, that the adverse remarks had no basis, to substantiate which, he stated, that on as many as 16 occasions, the applicant was given adverse remarks in his weekly diaries, showing the disposal of pending RT-12 returns of the assessee. He referred to letter dated 13.3.85, addressed by Shri R.L. Mathur, Assistant Collector of Customs and Central Excise, Division II, Faridabad (who was the Reviewing Officer ^{at the} impugned A.C.R. for 1983) to Shri S.N. Gupta, Administrative Officer (Hq) Central Excise and Customs Collectorate, New Delhi in support. Shri Khurana stated, that the respective authorities to whom the applicant had addressed his representations, for expunction of the adverse remarks in his A.C.R. for 1983, had carefully examined the various points urged therein and had objectively arrived at a decision to negative his representations.

9. I have given due thought to the rival contentions and have examined the relevant record placed before me, by either side and in particular, the impugned A.C.R. for the Reporting Year 1983.

10. Scanning the said A.C.R, prima facie, it seems to me, that this application can be disposed of, on the short ground, of contradiction in the remarks entered by Shri R.L. Mathur, Assistant Collector as Reviewing Officer, in the impugned A.C.R. The Reporting Officer

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too, has lapsed into contradiction, while entering his remarks in the said A.C.R., as is evident from the following. In Part III of the A.C.R. against Sr. No. 2, in regard to " Promptness in attending to work (evaluation with reference to field duties as office work and especially with reference to reduction of arrears and preparation and submission of various reports, returns, and maintenance or records)", the Reporting Officer has commented thus:

" No comments, as officer joined in the Department in 1981 ".

However, the Reviewing Officer dissented from him by observing as under:-

" The remark is irrelevant. The Reporting Officer should have commented on the performance."

11. It is apparent from the foregoing, that the Reporting Officer, had nothing adverse to comment upon, against the applicant, in his A.C.R. for 1983, in regard to submission of various reports and returns by the applicant. It, therefore, ill-behoves the Reporting Officer, to state, that on as many as 16 occasions, the adverse remarks were made in the weekly diaries of the applicant, on his poor performance, in regard to R.T. 12 returns of the assesseees, as observed by the Reviewing Officer, in his aforesaid letter dated 13.3.85. These weekly diaries have not been shown to me. According to the instructions of the Government of India, in regard to writing of A.C.Rs, a "memo of service", is required to be maintained, for each reporting year, wherein, all instances of good as well as bad work, coming to his notice, are to be promptly recorded therein. Such "memo of service", does not seem to have been maintained by the Reporting Officer, which could have served as a basis, for the record of adverse entries in the impugned A.C.R. of the applicant. In its absence and of other relevant evidence, the above adverse remarks lack credibility.

12. The Reviewing Officer has not applied his mind, while entering his remarks in the A.C.R.. While stating at the outset, that he agrees with the assessment of the Reporting Officer, ⁱⁿ He has, however, rated him as " Good ", against S. No. 11, Part IV of the A.C.R. on; " Overall assessment of performance and qualities ". Clearly, the

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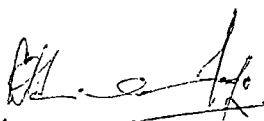
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Reviewing Officer has lapsed into self-contradiction. If the overall assessment of the applicant is "good", as stated by him in his A.C.R. nothing adverse subsists, in the impugned A.C.R. against the applicant. On this fact alone, it is manifest, that the impugned A.C.R. of the applicant for the year 1983 was good and not adverse (emphasis placed). The Officer entrusted with the duty of writing and reviewing the A.C.R, has to exercise the utmost care and objectivity, while assessing the performance of an employee in his A.C.R., as tellingly epitomised by the Supreme Court in the following words, in 1975-4-SCC-318 (at 329-30), 1975-SCC-(L&S)-274 and AIR-1975-SC-446 (Parvaz Qadir V. Union of India):-

" In our view, often enough, the entries in confidential records are themselves an insignia of the capacity and capability of the maker, as a superior officer, as well as a commentary, on the quality against whom that confidential remark is being noted. But those who are charged with the duty to oversee that these entries are fair, just and objective, quite often, do intervene and rectify ^{the} entry, on representation being made against it, at the proper time".

13. In the light of the foregoing, I allow this application, by quashing the aforesaid impugned order dated 9.6.88 (Annexure A) issued by R-2, and hold, that the A.C.R of the applicant, for the Reporting Year 1983 was good and, therefore, not adverse.

14. No orders as to costs.

DATED: 9.8.89.


(L.H.A. REGO) 9.8.89
MEMBER (A)