

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1819/88
XKAXXNOK

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DATE OF DECISION 9.8.1989

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Shri J.N. Bhatia Applicant (s)

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

Versus
Union of India & Ors Respondent (s)

Shri P.P. Khurana Advocate 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

(Judgement of the Bench delivered by
Hon'ble L.H.A. Rego, Member(A))

The applicant has impugned herein, the letter dated 20.5.1988 (Annexure 'A'), addressed by the respondent (R)-2 to him, that his representation dated 11.12.1987, addressed to the Custom Board, to expunge the adverse remarks entered in his ACR, for the Reporting Year 1985, has been rejected and prayed, that the same be quashed and other relief, appropriate in the circumstances of the case, be granted to him. The facts in brief are as follows:-

2. The applicant was promoted to the grade of Superintendent Central Excise, on 2.4.1985 and posted in that capacity, in the

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Headquarters, Statistics Branch, in the office of the Collector Central Excise and Customs, New Delhi. The adverse remarks entered in his ACR, for the Reporting Year 1985, were communicated to him by R-2, by his letter dated 11.8.1986 (Annexure 'B'). He represented thereon (Annexure 'C'), to the Principal Collector of Central Excise, New Delhi and the same was rejected by the latter by a non-speaking order communicated to him by R-2 on 26.10.1987 (Annexure 'D'). He submitted a further representation thereon, to R-1, on 11.12.87 (Annexure 'E') but complains, that the same was rejected by him, as was conveyed by R-2, by his letter dated 20.5.88 (Annexure 'A'). Aggrieved, the applicant has come before me, through his present application.

3. The respondents have filed their reply, countering in the application and the applicant has filed a rejoinder thereto.

4. Shri R.R. Rai, learned counsel for the applicant contended, that the adverse remarks for the Reporting Year 1985, in respect of his client, were communicated to him inordinately late by R-2, on 7.8.86, in violation of the instructions contained, in O.M. dated 30.1.78, of the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, according to which, these remarks should have been communicated to him, within a period of one month, of the expiry of the Reporting Year; that these adverse remarks should have been communicated to him, within a maximum period of 2 months i.e. by Feb 1986 at the latest and any

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delay thereafter, would render these remarks invalid and void and that according to the decision of the High Court of Judicature, Delhi in 1979 SLJ 727 (Gita Ram Gupta Vs. Union of India), such delay, in communication of adverse remarks is fatal, as it does not serve any remedial purpose, for the reason, that if these remarks were promptly communicated to the officer, it would have helped him to remedy his defects; that his client had not received any adverse remarks earlier, in his career, spanning as long as 32 years; that the instructions contained in C.M dated 31.10.1961, of the Ministry of Home Affairs, Government of India, that a Government servant should be promptly apprised of his defects, so that he could show improvement, have not been complied with; that his client was not alerted by the respondents in time, in regard to his alleged lapses or defects, in his performance which warranted the adverse entry in his ACR for the Reporting Year 1985; that the last Reporting Officer, namely, Smt. A. Vasudeva, Assistant Collector In-charge of Customs and Excise Statistics Branch, could not have assessed the performance of his client objectively, as he had served under her, for a period of less than 3 months; that no adverse remarks in his ACRs, were communicated to the applicant prior to 1985 and that the adverse remarks entered in his ACR, are not borne by facts on record, particularly in regard to submission of returns relating to central excise work and that the adverse remark "Just adequate", entered in his AGR, could not be regarded adverse as such and held against him.

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5. Shri R.R. Rai, learned counsel for the applicant, called in aid, a catena of decisions as under, to strengthen his case:-

(i) 1982 (1) SLJ 207 (Gopeswar Dutta Vs. Union of India)

"Where an appeal has been rejected without assigning any reason and where an authority makes an order in exercise of a quasi-judicial function, it must record its reason in support of the order it makes. Rejection of appeal without giving reason as such cannot be sustained and must be quashed." The Court further held that "It is essential that the administrative authorities or tribunal should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them..... The rule requiring reasons to be given in support of an order is like the principle of audi alteram partem a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.... Arriving at a just decision is the aim of both quasi-judicial as well as administrative enquiries an unjust decision is an administrative enquiry may have more far reaching effect than in a quasi-judicial enquiry."

(ii) 1978 (1) SLR 829 (Madan Mohan Khatua Vs. State of Orrisa)

"In the instant case the representation of the petitioner has been disposed of without indication of any ground. It also does not show that the defects pointed out by the petitioner against the record of the entry were taken into consideration. Undoubtedly the representation made by the petitioner to the administrative superior is not required to be disposed as a revision to a judicial authority. Yet, it is appropriate that the representation made to the administrative superior is disposed of in such a manner that the

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representationist is in a position to appreciate that the grievances indicated in the representation were taken into account. A bald order indicating the fact of rejection would not satisfy the aggrieved officer and it is likely to create an impression that the merit of the matter has not been taken into account."

(iii) A.T.R. 1987(2) CAT-360 (E.G. Nambudiri Vs. Union of India)

"While it may be accepted that character roll entries are not the same thing as departmental enquiries and do not entail immediate punishment but adverse entries in the ACRs of an officer can have adverse effect on his promotion and even in some cases his continuation in service. A person can be retired under certain circumstances on the basis of his ACRs. It is, therefore, necessary that ACRs though of an administrative nature have to be written carefully and any representation against adverse entries must be considered carefully and no impression should be given that the authority concerned did not apply its mind to such a representation. If no reasons are given and a bold order is passed rejecting the representation, it could be constituted that the concerned authority had not applied its mind. In the present case while rejecting the applicant's application for expunging adverse entries in his C.R. for the year 1984, the administrative authority viz. the Ministry of Commerce, in their Order dated 6-1-1986, as well as in the subsequent order dated 14-8-86, on applicant's representation to the President, no reasons have been given for rejecting the representation of the applicant. In ~~the~~ consequence, these should be held as bad in law and liable to be quashed. The order rejecting the representation against the adverse entries, is hereby quashed and the adverse remarks are to be treated as having been expunged."

(iv) ATR 1987(2) CAT-510 (Krishan Lal Sharma Vs. Union of India).

" In the adverse remarks, it was recorded that he was highly indisciplined. It is not clear as to how he was indisciplined as no particular incident is mentioned or communicated to the petitioner. It is also stated that he is irregular, careless, and casual but no particular whatsoever are given. In the absence of these particulars and specially in the back ground of the facts of this case, these adverse remarks cannot be sustained and are accordingly quashed."

6. Based on the above decisions, Shri Rai sedulously contended, that his client was not given a fair and proper hearing, on his representation, against the adverse remarks entered in his ACR, for the Reporting Year 1985; that the orders, passed by the respective authorities on his representations, were brusque and non-speaking; that these authorities did not apply their mind at all, to the various contentions urged by the applicant, to expunge the adverse remarks entered against him and that the adverse remarks so entered, were not substantiated by facts and, therefore, pleaded, that the said adverse remarks be expunged from his ACR.

7. Rebutting the above contentions, Shri P.P. Khurana, learned counsel for the respondents, submitted that the applicant was ominously silent, on the following adverse remarks entered in Parts II and III of his ACR:-

Part-II

"The resume given by the Superintendent is not factually correct as very few reports from the statistics section were sent in time."

Part III

"The officer has to be reminded about his duties time and again."

8. He further submitted, that these adverse remarks were communicated to the applicant, with reasonable expedition and the lapse of 7 months in doing so, could not have the effect of obliterating adverse remarks, as contended by the counsel for the applicant. It was not true he asserted, that the service record of the applicant, was without blemish throughout, hitherto, as contended by him, as during the period 1.7.56 to 30.6.57, his ACR was stained with adverse remarks, which were communicated to him on 12.12.1957. Besides, he pointed out, that his increment was withheld in 1959 and the penalty of censure imposed on him in 1983. This apart, Shri Khurana emphasised, that the performance of the applicant, during the Reporting Year 1985, was critically assessed, on the basis of his work for that period specifically and ~~as~~ his past service record had no nexus with the same. He stated, that the applicant was time and again alerted, by the respondents, to improve his performance and evince more interest in his work and that he was also orally admonished, on several occasions, to make amends but to no avail.

9. The contention of the applicant, that he had served for a period of less than 3 months under the Reporting Officer, namely Smt. A. Vasudeva was not correct, he explained, ~~as~~ for even during the period of training for which he was

deputed, he was under Smt. A. Vasudeva who was his Reporting Officer. He stressed, that both the Principal Collector of Central Excise as well as R-1 had carefully examined his representation for expunction of adverse remarks before rejecting the same. Concluding, Shri Khurana urged, that the application was bereft of merit and, therefore, be dismissed as such.

10. I have given due thought to the rival pleadings and have examined the relevant record placed before me, by either side and in particular, the ACR of the applicant, for the Reporting Year 1985. At the outset, I must observe, that the remark "Just adequate" recorded by the Reporting Officer and concurred with by the Reviewing Officer in the said ACR of the applicant, cannot in its plain sense, be regarded as an adverse remark. In fact, the Reporting as well as the Reviewing Officers, should have been precise and explicit in their assessment of the work-performance of the applicant against the relevant items in his ACR, bearing in mind, the following dictum of the Supreme Court in (1975) 4 SCC 318(at 329-30), 1975 SCC (L&S)274 and AIR 1975 SC 446 (Parvez 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 any entry on representation being made against it at the proper time."

11. Shri Khurana stated, that the applicant had not stated anything in his application in regard to the adverse remarks in his ACR, as at para 7 supra.

12. Shri Rai stated, that at no time during 1985, was his client alerted, either by the Reporting or the Reviewing Officer, and given the requisite measure of guidance, on the alleged shortcoming in his work, which led to an adverse entry in his ACR. The respondents have not brought to my notice, any concrete material, in support of the above adverse remarks. According to the instructions of the Government of India in regard to writing of ACRs, 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 ACR of the applicant. In its absence and of other relevant evidence, the above adverse remarks lack credibility.

13. The contention of the applicant that owing to delay on the part of the respondents in communicating the adverse remarks in his impugned ACR, the same get erased ipso facto according to the decision in Gita Ram Gupta's case

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does not hold water. This delay cannot be said to be so inordinate, so as to have denied opportunity to the applicant to make amends. Besides, according to the observation of the High Court of Judicature, Orissa in 1979 Lab 1192, ^{xxix} ~~xxxxxxxxxxxx~~ the time-limit for communication of adverse remarks is not mandatory but only directory and, therefore, the delay in the communication of adverse remarks, does not erase them. I deferentially concur with this observation of the High Court of Judicature, Orissa but the fact remains, that the concerned authorities to whom the applicant had addressed representations, for expunction of the adverse remarks in the ACR for 1985, did not dispose them, of by a speaking and articulate order, according to the ratio in the cases of Gopeswer Dutta, Madan Mohan Khatua and E.G. Nambudiri relied upon by the applicant.

14. The contention of the applicant, that the applicant had served for a period of less than 3 months under the Reporting Officer namely Smt. A. Vasudeva and, therefore, the latter could not have objectively assessed his work and written his ACR for the Reporting Year 1985, is meritless as even during the marginal intervening period of his deputation on training, she did exercise overall watch over him, as a Reporting Officer. In their reply, the respondents have averred, that the applicant was warned several times verbally to help rectify his defects but the impugned ACR makes no mention of the same. Neither is this fact recorded in the "memorandum of service" required to be maintained by the Reporting Officer according to the extant instructions of

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the Government of India wherein essential feature of both good as well as bad work relating to a civil **servant** are required to be entered, to serve as a basis, for final entry in the ACR nor is there other supporting evidence to substantiate the adverse remarks in question.

15. For the reasons aforementioned, the rather cryptic remark "Just adequate", into the ACR of the applicant for the Reporting Year 1985 cannot be regarded as adverse. xx

The concerned authorities to whom the applicant had represented for expunction of the adverse remarks in question, in his ACR for the Reporting Year 1985, had not disposed them of by a reasoned and speaking order, in keeping with the principles of natural justice.

16. I have adjudged the matter, bearing in mind, that in a judicial review, the Tribunal is primarily required to examine as to whether, the concerned authorities had taken into account, irrelevant or neglected to take into account relevant factors, while entering the impugned adverse remarks in the ACR of the applicant for the Reporting Year 1985, or whether, these remarks were so manifestly unreasonable, that no reasonable authority who had the competence to record them, could have reasonably entered these remarks, in the said ACR. This judicial review encompasses as a matter of law, the relevance of the factors. I am satisfied, that the concerned authorities, did not comply with the above requirement, while recording the impugned adverse remarks and as a result, they

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are liable to be expunged.

17. In fine, I make the following order.

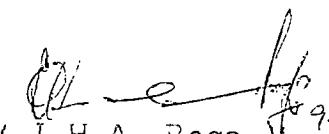
ORDER

(i) I hold, that the remark "Just adequate" entered in the ACR of the Applicant, for the Reporting Year 1985 at the respective places, by the concerned authorities, cannot be regarded as adverse.

(ii) I also hold, that the other adverse remarks in the said ACR of the applicant, are ill-founded.

(iii) As a result, the impugned letter dated 20.5.1988 addressed by R-2, to the applicant, conveying to him, that the R-1 did not find it possible, to expunge the adverse remarks recorded in his ACR for the said year, is declared as void. Consequently, the impugned adverse remarks in the ACR of the applicant for that year stand expunged.

18. The application is disposed of accordingly, with no order however, as to costs.


(L.H.A. Rego) 10.8.87
Member(A)