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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION: 22.11.1988.

Regn. No. D.A. 345/88.

Shri Virender Pal Singh                      ...                      Applicant

Vs.

Union of India & Ors.                      ...                      Respondents.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the applicant:                      Shri R.K. Kamal, Advocate.

For the respondents:                      Shri P.H. Ramchandani, Sr. Standing Counsel.

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Virender Pal Singh, Deputy Collector, Central Excise, against the impugned order No. A.28012/37/85-EC/SO(P) dated 18.8.1986 passed by the Central Board of Excise and Customs, New Delhi (Annex. A-1 to the Application).

2.        The applicant is an officer of the Indian Customs and Central Excise Service. During the year 1983, he was posted as Deputy Collector of Central Excise, Ahmedabad. According to the applicant, his services were rated much above average and he enjoyed excellent reputation for integrity and performance etc. The following instances support this statement:

- (a) His appointment as a Member of the DPC chaired by the Chief Commissioner of Income-tax, Ahmedabad in March, 1983.
- (b) his empanelment for the post of Deputy Secretary and his appointment as such in November, 1983, and

(c) his subsequent empanelment for the post of Director in 1985-86 and the selection for the post of Secretary, Food Corporation of India in 1986.

3. While working as Deputy Secretary, Department of Official Languages, he received a letter dated 18.8.1986 (Annexure A-1) indicating the following adverse entry in his confidential report for the year 1983-84:

"There are reasons to suspect the officer's integrity."

The applicant made a detailed representation against the said adverse entry communicated to him belatedly without any supporting instances or material whatsoever. In response, he received a cryptic and a non-speaking order purported to have been passed by the Secretary (Revenue) (Annex. A-3 to the Application). The disposal of his representation established complete non-application of mind by the appellate authority.

4. In accordance with the Department of Personnel & A.R. Memo. No. 21011/1/77 Estt. A dated 30.1.1978, the ACRs should be recorded within one month of the expiry of the report period; the adverse entries alongwith a mention of good points should be communicated within one month of their being recorded and the representation against adverse remarks should be decided within three months of its submission. The instructions of the Ministry of Home Affairs dated 21.6.1965 for filling up the column relating to integrity have also not been followed. No diary has been maintained by the reporting officer regarding instances which created suspicion

about his integrity. Nor any follow-up action was communicated to the applicant. The adverse entry was communicated to the applicant after a delay of 31 months without giving any instance or ground for suspecting his integrity. During the year 1983-84, the applicant worked under two Collectors and it is not known as to which period these entries are related. In the application before the Tribunal, it has been stated by the applicant that another ACR relating to the year 1983 was actually written in 1984 but the same was destroyed and a fresh ACR for 1983 was written in 1986 and communicated to the applicant on 18.8.1986. According to the Department of Personnel instructions, the reporting officer while recording adverse entry should give an indication of the efforts to reform made by him by way of guidance etc. and the result of such efforts should also be mentioned. The representation of the application was also disposed of after more than seven months while it should have been done within three months. The orders rejecting the representation being cryptic and non-speaking are also bad in law. The applicant does not remember any case where his integrity could have been suspected and the pleas taken by the respondents in their counter are wrong. The learned counsel for the applicant cited some case law to support his arguments. These are (i) ATR 1987 (2) CAT 360. This deals with quashing of bald and non speaking orders. (ii) ATC 88 Vol. 6 page 666 - Tejinder Singh Vs. UOI. In this case also, no details were

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communicated to the applicant and it was held that instances must be given by the respondents where conduct of the applicant is involved. If there is a slur on the character of a person, the exact instances must be quoted. (iii) ATC 88 Vol. VI p. 385 - M. Shashidhar Vs. UOI. In this case, the adverse remarks were expunged by the Tribunal as it was held that the appellate authority had not applied its mind, and (iv) T-999/85 decided by the Principal Bench in the case of N.K. Dikshit Vs. UOI. In this case, it was held that confidential remarks attacking the integrity of a person do attract judicial review.

5. The respondents in their reply have stated that the representation of the applicant against the adverse remarks was considered carefully by the competent authority and the same was rejected as the adverse remarks were based on confirmed facts and the applicant had no prima facie case. It has been submitted that the remarks recorded by the reporting/reviewing officer in the C.R. of their subordinate officers are essentially their personal opinion and this being an administrative matter, it is not open to judicial review. It has been explained that the adverse remarks communicated to the applicant from his ACR for the year 1983 are on integrity only. The applicant's integrity came under suspicion in a case of adjudication in which large quantity of silver was seized. The applicant passed an order on the file releasing the silver. When the reporting officer came to know about it through a highly secret source of intelligence, he

directed the applicant to change the order releasing silver into an order of confiscation and imposition of penalty on the person concerned. Subsequently, as the party started pressuring the applicant, he tried to evade the party by remaining absent for long periods. For this prolonged absence, separate action was taken against the applicant and punishment awarded. This incident not only adversely reflected on the applicant's integrity but also rebuts his claim of firmness in his decisions and clean public dealings. The learned Sr. Standing Counsel for the respondents said that the reasons for suspecting the integrity of the applicant were known both to the applicant and the reporting officer and, therefore, it was not necessary to inform the applicant of the reasons for suspecting his integrity. The reporting officer taking a realistic and humane view did not go beyond recording adversely about his integrity in his CR and as he did not want to harm the applicant further since the evil consequences were halted and both the parties knew about the incident, no further action was taken except recording the adverse C.R. Shri Ramchandani said that various guidelines have been prescribed by the Government in the matter of writing of ACRs but these are not statutory rules. In the case of J.R. Raghupati Vs. State of A.P., SCC 1988 Vol. III page 313 on administrative law, it has been mentioned that only mandatory provisions are binding but directory provisions are not mandatory and therefore, not binding and in such cases, judicial intervention would not be necessary. At best, the respondents could be asked to elaborate the reasons and decide the case within a period of three months.

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6. It is difficult to accept the contention of the respondents that the applicant knew the reasons for adverse entries very well and, therefore, it was not necessary for reasons being given to him. It appears that the applicant had been punished for absence from duty during the year 1982 but no such thing happened in the year 1983. The statement of the respondents in para. 6.2 of their reply <sup>that</sup> ~~for~~ for prolonged absence, separate action had been taken against the applicant and punishment awarded is apparently wrong as the occurrence took place in 1983. According to the theory of the respondents, the applicant tried to avoid the parties in whose favour he had given an order earlier and changed it on the pressure of his superior officers later and thus, he was avoiding to see the party concerned. In any case, if the senior officer asked the applicant to change the order releasing silver into an order of confiscation and imposition of penalty on the person concerned, this itself is not a very correct thing to do. It is doubtful if a superior officer should interfere in quasi-judicial matters and it was brought out during arguments that the Collector came to know from secret information that the applicant had released the silver on receipt of illegal gratification. This is a very serious matter and if it <sup>were</sup> ~~was~~ true, mere charge of order would not be enough and making an adverse remark about the applicant's integrity in his ACR would also not be adequate if the superior officer knew or had reason to believe that the applicant had taken illegal gratification in passing an order. Very serious action should have been taken because if the charge could be

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proved, this could even lead to the <sup>presumption and dismissal</sup> ~~dismissal~~ of the applicant.

It is not open to a superior officer to compound such a serious offence. It has been stated that the Collector had been transferred and there was, therefore, delay in writing his ACR. But even then, delay of 31 months in writing the C.R. cannot be justified. Besides, there are clear instructions regarding filling up of the integrity column in the character rolls. The procedure requires that where the officer's integrity is beyond doubt, it should be so stated but in case there is doubt or suspicion, the column should be left blank and action taken as under:-

- (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the officer's work for sufficient time to form a definite judgment or that he has heard nothing against the officer, as the case may be.
- (b) If, as a result of the follow up action the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.
- (c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
- (d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above.

(Ministry of Home Affairs O.M. No. 51/4/64-E-stt. (A) dated 21.6.1965).


A senior officer like the Collector of Central Excise would

*Ben* certainly know of these instructions. *It is also not explained why the Reporting Officer also became the Reviewing Officer in this case. Ben*

7. In view of the above facts especially that no reasons

have been given to suspect the integrity of the officer and that the representations have been rejected by cryptic and non-speaking

orders, in particular where the character of a person has been attacked, there is no other alternative but to quash the adverse entry made in the CR of the applicant. The impugned orders are, therefore, quashed and the application is allowed. There will, however, be no order as to costs.

  
(B.C. Mathur) 22.11.88  
Vice-Chairman.  
22.11.1988.