

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 893 and 932 of 1988
T.A. No.

DATE OF DECISION 29.9.1989

Shri P. Subramani Applicant (s)

Shri R.K. Kamal Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Smt. Raj Kumari Chopra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chair man.

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

Two application Nos. OA 893/88 (which was originally filed as OA 591/87 in the Madras Bench and transferred to the Principal Bench on 15.4.1988) and OA 932 of 1988 have been filed by Shri P. Subramani, Deputy Collector of Central Excise, under Section 19 of the Administrative Tribunals Act, 1985, against adverse entries made in his ACRs for the years 1985 and 1986. OA 893/88 has been filed against impugned orders No. D.O.No. C. No. II/9/36/86-CF/PA dated 22.9.1986 and D.O. F.No. A.28012/47-86-EC/SO (P) dated 28.4.1986 and O.A. No. 932/88 against impugned order No. D.O.F.No. A. 28012/26/87-EC/So (P) dated 22.5.1987 passed by the Central Board of Excise and Customs, New Delhi.

2. Brief facts of the case, as stated in the applications, are that the applicant joined service on 10.8.1973 as Assistant Collector of Central Excise and Customs and was promoted as Deputy Collector of Central Excise in November 1982, after superseding many Asstt. Collectors who were senior to the applicant. On 13.6.1983, he joined as Deputy Collector of Central Excise, Sivakasi, but in April, 1984, the headquarters of the Deputy Collector's Unit at Sivakasi was shifted to Tirunelveli and he

joined the office in Tirunelveli. Both the adverse entries have been made by Shri K. Sankaraman^{ra} as Reporting Officer who was then Collector, Customs & Central Excise, Madurai. The adverse entries for the year 1985 were conveyed to him by the Central Board of Excise & Customs on 28.4.1986 against which he submitted appeals to the Board on 14.5.86 and 18.6.1986. By the Central Board of Excise & Custom's letter dated 22.9.86 the applicant was informed that the Reporting Officer had considered his appeals and rejected the same. No reasons were given for the rejection and the material on the basis of which the adverse remarks were entered were also not furnished. The adverse remarks conveyed to him for the year 1985 are as follows:

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| " (i) Judgment and sense of proportion: | Poor |
| (ii) Industry and conscientiousness: | |
| Conscientiousness - | Poor |
| (iii) Executive ability displayed: | He possesses these traits to a reasonable extent even though in regard to readiness to assume responsibility he is found wanting in some of the cases. Rating in this regard: Poor. |
| (iv) Other factors etc: | Known to be fond of drinks. |
| (v) Overall assessment of performance and qualities: | Poor." |

3. According to the applicant, soon after he took over as Dy. Collector, Sivakasi, and came in contact with Shri K. Sankaraman^{ra}, then Collector, Customs & Central Excise, Madurai, he bore ill-will towards him for some inexplicable reasons. Within 1-1/2 months after his taking over as a Deputy Collector of Sivakasi, in June, 1983, by an order dated 30.8.83, whittled down the powers and jurisdiction of the Dy. Collector of Central Excise, Sivakasi, and chose to deal directly with the Asstt. Collectors under his charge instead of dealing with the applicant. Nevertheless, he adjudicated 20 Central Excise cases and 5 Gold Control cases and conducted more than the envisaged number of inspections and visits between January and December, 1985. From July, 1985, there was only one Dy. Office Superintendent, U.D.C. and L.D.C., two Inspectors and one Stenographer posted under the applicant. All the other executive

staff were posted out from under his charge. In the context of the whittling down of powers and removing his subordinates resulting in very little work for him, the applicant states that it is not possible to infer that his judgment, sense of proportion, conscientiousness, executive abilities and habits were poor against the background of only adjudications which is a quasi-judicial function and inspections which is a routine executive function which are not tangible items of work. Inspections were carried out in great detail as was not done hitherto. With regard to adjudications for the year 1985, at the end of February 1985, he was left with only four Central Excise cases and no Gold Control cases to adjudicate because of the special drive taken by him. According to the applicant, it is the bias of the Reporting Officer against the applicant which warranted in his getting the said adverse remarks. The paradoxical nature of the remarks can be seen in that though industry and conscientiousness come under the column, he has been graded poor only for conscientiousness, since nothing has been said about his industry. He infers that the Reporting Officer found him industrious. Can a person lacking in conscientiousness be industry? This is contradictory. Similarly, in the column of executive abilities displayed, the Reporting Officer has written that ^{the applicant} had these traits to a certain extent. If that were the case and it was noticeable, how can it be said that the applicant was so lacking in executive abilities as to be graded as poor. Since the same officer has graded him from 1983, it will go to show that subjectivity and bias were the real reasons for the alleged fall in his hitherto standards and has requested the Tribunal to examine his entire C.C.R. The Reviewing Officer had no previous knowledge of the applicant or about his performance or about his abilities and, therefore, he has merely endorsed the views of the Reporting Officer. In fact, instructions are specific that a Reviewing Officer not familiar with a subordinate's performance should apart from making independent enquiries, give the subordinate officer a hearing before grading him adversely. The Reviewing Officer has not applied his mind but merely confirmed the Reporting Officer as a matter of course. The Reviewing Officer, Mr. Karkhania, the Principal Collector of Central Excise, Madras, had never met him prior to the date of counter-signature of the adverse remarks. No specific instances have been mentioned as to how the Reporting Officer came to the conclusion that the applicant's

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performance and all other aspects of his character were poor.

4. As regards the adverse remarks for the year 1986, the applicant was conveyed by the Central Board of Excise and Customs on 22.5.1987, the following adverse remarks:

"An officer of indifferent attitude to work".

The applicant contends that he has no doubt that the above adverse remarks in his ACR for 1986 are motivated by the same bias and malice of the Reporting Officer who recorded adverse remarks without justification for the year 1985. To avoid repetition, the same instances are not being explained by the applicant. The applicant submitted a representation on 23.6.1987 in response to which a cryptic and non-speaking order dated 8.12.1987 was communicated to the applicant rejecting the representation without any reason whatsoever. Even though the official record throughout the career of the applicant was unblemished and meritorious, the applicant was communicated adverse entries. The grounds urged by the applicant against the adverse remarks are that these are biased, malafide and borne out of ill-will and are, therefore, null and void.

to OA 893/88

5. The respondents (1 to 3) in their reply/ have denied all the allegations contained in the application. The adverse remarks for the year 1985 were communicated to the applicant on 28.4.86. Being aggrieved by the aforesaid adverse remarks, the applicant filed two representations to the Central Board of Excise & Customs on 14.5.86 and 18.6.86. After careful consideration, the Central Board of Excise and Customs, rejected the applicant's representations. It is neither necessary nor practicable to communicate fall in standards to an officer in relation to his past performance as revealed through his annual confidential reports. The reviewing officer in the case of the applicant was Shri K.J. Raman, the then Principal Collector of Customs and Central Excise, Madras, and not Shri Karkhania, the present Principal Collector of Customs & Central Excise, Madras, as averred by the applicant. Shri K.J. Raman was holding the post of Principal Collector of Customs and Central Excise Madras from 19.8.85 to 2.1.86 and he had sufficient knowledge of the applicant and of his performance and ability and has agreed with the views of the reporting officer after applying his mind properly to the various instructions on the subject. The applicant's contention that this act of

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his is perfunctory and biased is, therefore, not tenable. The contention of the applicant that the order of rejection of his representation against the adverse remarks passed by the Central Board of Excise and Customs, New Delhi, is cryptic and is a non-speaking order and is therefore violative of the principles of natural justice is not tenable. Adverse remarks are communicated to a Govt. servant ~~only~~, with the object of enabling him to get over the defects/deficiencies in the near future. It is only with a view to conform to the principles of natural justice, the remedy in the shape of representation has been provided through executive instructions. It is not a statutory remedy in quasi judicial proceedings like the appeal provided in the C.C.S. (C.C.A.) Rules, against any punishment ^{der} imposed or adjudication made un/the provisions of Central Excise Rules. It is only in respect of such orders rejecting the appeals, a speaking order containing the important points raised by the applicant and the reasons for rejecting the same is invariably issued. Moreover, there are no orders/instructions requiring the issue of such speaking orders in case of rejection of a representation against adverse remarks which is purely an administrative order. The Central Board of Excise & Customs has passed the order of rejection of the applicant's representation after carefully going through the various points raised by the applicant in his two representations and also the detailed comments offered by the Reporting Officer. The respondents have cited the case of D. Periasamy Vs. Chairman, CBDT decided by this Tribunal in OA No. 19 of 1987 wherein it has been held that "it is not possible for the Tribunal to re-appraise and assess the applicant's work and conduct during the relevant period and see whether the assessment made by the immediate competent authority and the Reviewing authority was appropriate or not."

6. Respondent No. 4, Shri K. Sankararaman, Collector of Central Excise, has also filed a detailed reply refuting the allegations made by the applicant. He denies that he picked up an inimical attitude towards the applicant under the influence of the general trade or, for that matter, any other person. Complaints against the applicant were brought to his notice when he was advised to steer clear of controversy and contribute his share for the department mobilising maximum revenue. The officer was given sufficient guidance in the conduct of his work and was given

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sufficient opportunity to show his true worth. As to the observation about the applicant's fondness for drinks, it was based upon the knowledge gained by him from departmental officers as well as outsiders having contact with the department. He has denied that there was any subjective assessment. No grudge was borne by him against the applicant. The applicant had been advised by the 4th respondent to improve his performance and work. The remarks in question have been given by him based upon his assessment of the applicant's qualities and performance in the post held by him.

7. In their reply to OA 932/88, the respondents ^{admit} / that adverse remarks - "An officer of indifferent attitude to work" in the applicant's ACR for the year 1986 were conveyed to the applicant against which the applicant filed a representation on 23.6.1987. The representation was duly considered by the competent authority and after careful consideration the impugned adverse entries were found to be sustainable. Hence the representation was rejected and communicated to the applicant through Dy. Director of Inspection, Customs and Central Excise vide his No. 1046/1/87-CCEs dated 8.12.87. The basic grievances brought out in the application by the applicant are:

- (a) Respondent No. 4 who has recorded the impugned entries was biased and prejudiced against the applicant;
- (b) The instances which formed the basis of adverse remarks had not been given; and
- (c) The impugned letter communicating the rejection of the representation of the applicant was not a speaking order, hence the principles of natural justice have been violated.

In regard to (a) the respondents have denied that the impugned adverse entries in the applicant's ACR for the year 1986 were made by Respondent No. 4. In regard to (b) they have stated that ACRs are written on the basis of impression which the superior officers get about the work of the reported officer during the course of a reporting period and need not, therefore, necessarily refer to specific instances. As regards (c) above, no format has been prescribed for communicating the decisions taken on representation/memorials against adverse remarks. Nor do the instructions provide that these decisions should be communicated by a speaking

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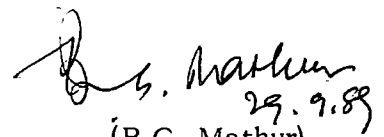
order. The only criteria is that the representation against adverse remarks should have been examined by the competent authority. This requirement has been duly complied with. In passing the impugned order dated 8.12.87 the competent authority to decide the representation i.e. Secretary (Revenue) has taken ~~conscious~~^{conscious} decision after considering all the submissions made by the applicant in the representation and the material on record (which formed the basis of the entry). They have denied that the impugned entries were recorded in colourable exercise of powers and with extraneous considerations. These are honest observations of the officer recording the impugned entry. Since Respondent No. 4 was not responsible for recording the impugned adverse remarks, the submissions of the applicant of bias etc. have no relevance.

8. In a rejoinder filed on behalf of the applicant, it has been stated the respondents have given evasive reply. They should have assisted the Tribunal by disclosing the name of the officer who made the remarks. According to instructions in force, the ACRs are written not on the basis of mere subjective impressions but on the basis of objective assessment of concrete instances. In O.A. 511 of 1986 reported in ATR 1987 (2) C.A.T. 36, the Tribunal expunged the adverse remarks on the grounds that the representation had been rejected in a non-speaking order. That law still holds good. In the interest of justice and fair play and with a view to improve the performance, concrete instances should be cited to enable the affected officer to make effective and purposeful representations.

9. I have gone through the pleadings and the arguments by the learned counsel on both sides. I have also gone through the confidential reports of the officer furnished by the Department. The applicant has alleged malafide against the Collector of Customs, Shri K. Sankararaman, but he has not mentioned why he should be against him. In fact no malafide has been established. I find that the Collector, Shri Sankararaman, in the ACRs of 1985 and 1986 has also given some complimentary remarks to the applicant besides the adverse remarks which show that he has no personal ill-will against the officer. The adverse remarks in the ACR of the applicant for the year 1986 are not written

by the Collector, but by the Chairman of the Central Board of Direct Taxes. Normally, it would be necessary to give reasons supporting the adverse remarks, but in the type of remarks given like "indifferent attitude to work" or like "executive abilities", "sense of proportion", etc. these are subjective judgment of the reporting officers. Similarly, in writing the remark "known to be fond of drinks", examples need not be given in such cases. These remarks are primarily conveyed for the persons to improve themselves and the remarks by themselves are clear enough.

10. After going through the ACRs, I am inclined to agree that there has been no arbitrariness or colourable exercise of authority by any officer in writing the CRs. These are not judicial or quasi-judicial proceedings and if one is satisfied that the representations have in fact been seen by the appropriate authorities and orders passed after applying their mind, nothing further need be done. In the circumstances, I do not find it necessary to interfere with the impugned orders concerning the adverse entries in the ACR of the applicant for the years 1985 and 1986. In the circumstances both the applications are rejected. There will be no orders as to cost.


(B.C. Mathur)
Vice-Chairman