

Central Administrative Tribunal  
Principal Bench, Delhi.

12

REGN. NO. OA-205/86 .... Date of decision 16.12.87

Shri Rakesh Kumar Jain .... Applicant

Vs.

Union of India & Ors. .... Respondents

PRESENT

Shri Raju Ramachandran ... Advocate for the applicant.

Smt. Raj Kumari Chopra ... Advocate for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order of the Ministry of Finance, dated 12.3.1985 communicated to the applicant through the Deputy Collector, Central Excise, Meerut on 19.3.1985 rejecting the request of the applicant for expunction of adverse remarks in his Annual Confidential Report. The brief facts of the case are that the applicant joined the Indian Customs & Central Excise Service in November, 1976 securing ninth position among the directly recruited officers through the U.P.S.C. According to the applicant, he received appreciation letters for his excellent performance in the Department. He was appointed Senior Assistant Collector (Internal Audit), Calcutta w.e.f. 1.11.1979 and continued to work as such single handedly upto 28.9.1981 as the second A.C.(Internal Audit), Shri J.N. Dey retired from service on 31.1.1981. The applicant had

....2....

(13)

a very heavy workload but with his efforts he was able to dispose of a large number of audit reports and due to his efforts an amount of Rs.2.72 crores of revenue evasion was detected in 670 detections incorporated in the audit reports. From 28.9.1981, the posting of the applicant was inter-changed locally with that of Shri Biswajit Dutta, Assistant Collector, Calcutta, XII Division. According to the applicant, this abrupt change of Shri Dutta was a sequel to the inspection of the records of the Calcutta XII Division by the Deputy Collector followed by a very scathing Inspection Note No.24/82 and also a letter, dated 14.10.1981 (Annexures XI and XII to the application). The Deputy Collector, in his Inspection Note, made certain conclusions against Shri Dutta which included "lack of knowledge of rules and procedures, lack of control over staff, self-confidence, poor disposals" and other negative attributes. According to the applicant, these remarks were incorporated in his character roll for the year 1981 although the Inspection Report could not be made the basis for the adverse remarks as it related to the period in which Shri B. Dutta was working as A.C. XII and not the applicant. According to the applicant, the Reporting Officer gave 'Good' entries, but the Reviewing Officer, viz., the Collector of Central Excise, Calcutta, gave adverse remarks. According to the remarks given by the Collector, he did not agree with the Reporting Officer and wrote that the applicant did not know the rules and procedures, lacked self-confidence, had no control over his subordinates and his disposal of work was poor. Regarding any special characteristics or abilities which would make him fit for out-of-turn promotion, the

.....3....,

14

Reviewing Officer wrote, "Only on the minus side".

2. The adverse entry was communicated to the applicant after 13 months whereas all processing, including consideration of representation, should be completed in 7 months' time as has been held by the Hon'ble Supreme Court in a case of I.P.S. officers. The order communicating the adverse entry also specified that the applicant had a right to represent but he would not be entitled to ask the basis on which the adverse entries had been written (Annexure I to the application). The learned advocate for the applicant said that this renders the right of the applicant to represent against the adverse entries illusory or negatory. He further said that even in preventive detention cases the grounds of detention are to be provided to the persons who are proposed to be detained. He said that if grounds are based on some documents and if these documents are not supplied to the detenu, it must be quashed. In the present case, the knowledge of the Reviewing Officer about the work of the applicant would be much less than that of the Reporting Officer and, therefore, if the Reviewing Officer differs from the Reporting Officer, reasons must be given and the applicant should have a right to rebut the same. The learned Advocate for the applicant also said that the decision on representation was <sup>inordinately</sup> ~~inadvertently~~ delayed. The date of communication of the adverse entry in the confidential report for the year 1981 was ~~communicated~~ <sup>on</sup> 4.1.1983. The representation against the adverse entry was made by the applicant on 10.2.1983 which was rejected by the respondents on 12.3.1985, i.e., after a lapse of more than two years.

.....4....

13

It is claimed that this frustrates the entire purpose of the exercise of writing confidential reports as no opportunity is given to the applicant to improve his work and on this ground alone, the adverse entry must be expunged. The learned Advocate for the applicant also emphasised the point that in rejecting the representation of the applicant, no reasons were given for rejecting the same. This makes the whole thing arbitrary. He cited the Calcutta High Court ruling in the case of Dr. Gopeswar Dutt Vs. Union of India, reported in 1982 (SLR, 857) where the Court has ruled that when a representation is to be rejected, the reasons must be recorded. The applicant also sent a memorial to the President against the rejection of his representation, but the same was also rejected without giving any reasons.

3. According to the learned Advocate for the applicant, there seems to have been some confusion in the mind of the Collector who reviewed the confidential report for the period ending December, 1981. The applicant had taken over charge of A.C. XII on 28.9.1981 and, therefore, a reasonable apprehension is that the remarks of the Reviewing Officer have been made on the work of the predecessor of the applicant who had been commented upon adversely in the inspection report of the Deputy Collector. It appears that there was a bona-fide belief in the mind of the Collector that the applicant was responsible for the poor work mentioned in the Inspection Report of the Deputy Collector. As the reports of the applicant had been 'Good' all along, suddenly he could not have become so bad as to have only 'minus qualities'. The applicant held charge of Calcutta XII Division only from 28.9.1981 to 31.12.1981 after the completion of the inspection by the Deputy Collector on

.....5...

16

- 5 -

19.9.1981 and it appears that all the blame for the lapses in that Division had been attributed to him. It has been stated in the application that the same Reviewing Officer had written his A.C.R. for the preceding two years, namely, 1979 and 1980 and also during the succeeding year 1980 but did not find any shortcomings and did not record any adverse remarks, not to talk of such type of extreme remarks, as recorded in the A.C.R. for the year 1981. Characteristics like 'No self-confidence' or 'Everything on the minus side' are the qualities which cannot be acquired or removed in a short period. The learned counsel for the applicant said that as there was undue delay in the communication of the adverse remarks as well as in the rejection of the representation, the adverse remarks must be expunged. According to the Deptt. of Personnel & A.R. Office Memorandum, dated 30.1.1978 and Ministry of Finance O.M. dated 24.5.1982, referred to in para.31 of the application, representations against adverse remarks have to be decided expeditiously and in any case within three months of their submission. The learned counsel for the applicant also relied on the following cases in support of his arguments:-

- (i) 1979(1) SLR, 804 - Gurdial Singh Fijji Vs. the State of Punjab.
- (ii) 1980(3) SLR, 256 - Union of India Vs. Ranjit Singh Grewal.
- (iii) 1987(2), Supreme Court Cases, 602 - P.C. Wadhwa Vs. State of Haryana.
- (iv) 1982(1) SLR 858 - Dr. Gopeswar Dutta Vs. Union of India.

....6...

18

In these cases, the courts have explained the purpose for communicating adverse remarks. The principle is well-settled that <sup>an</sup> adverse report communication is not an empty formality but is an opportunity given to an officer to explain his conduct and to improve his working. The object of the rule that representations should be disposed of within three months is to expedite communications so that an applicant gets a timely warning about his shortcomings and that adverse remarks not communicated within three months or a reasonable time, are to be ignored. Adverse remarks are in the nature of advice and not punishment and any delay in communicating the same will be against the spirit and objectives behind the writing of confidential reports. The learned advocate for the applicant said that the delay in the case of P.C. Wadhwa was only 13 months whereas in the present case, it is more than two years and that also without giving any reasons for rejecting the same.

4. The learned advocate for the respondents took a preliminary objection that the departmental remedies had not been exhausted. The applicant had not represented to the Ministry but chose to represent to the President. She explained that there has been no deliberate delay in communicating the entries or in deciding or in rejecting the representations, as, unfortunately, the connected files had got mixed up and hence the communication had been delayed. During the year 1981, the applicant held the charge of Assistant Collector (Audit) from 1.1.1987 to 27.9.1981 and of Calcutta XII Division thereafter. The report was initiated by the Deputy Collector (Audit) for the major portion of the year with which the Collector, Shri B.N. Rangwani, did not agree. She denied that the adverse remarks in the C.R. of the applicant were <sup>not</sup> a sequel to his taking over charge from Shri B. Dutta. According to her, the position was otherwise. The applicant was transferred from the post of Assistant Collector (Audit) because his performance in that post was not found satisfactory.

(B)

The character roll of the applicant was produced before me and I find that the Reporting Officer has given him a 'Good' report for the year 1981. During the year 1982, again the report of the Deputy Collector is 'Good' and the Reviewing Officer, Shri Rangwani who had given the adverse remarks in the previous year, has accepted the report of the Reporting Officer and considered him fit for promotion in his turn. The reports for the subsequent years are 'Very Good'. Immediately before 1981, I find the reports 'Good' and also accepted as such by the same Reviewing Officer, Shri B.N. Rangwani, although in the report for the year 1979 while Shri Rangwani had considered his overall assessment of performance as 'Good' and found him fit for promotion in turn, he found him just 'adequate' as far as industry and executive abilities were concerned, as the applicant was all the time complaining about his health. In any case, the entries are not adverse.

After going through the records and hearing the arguments on both the sides, I do feel that the adverse entries recorded by the Reviewing Officer in the character roll of the applicant for the year 1979 are unduly harsh. Apart from the technical flaw of a lot of delay in communicating the adverse entries in disposing of the representation of the applicant without giving any reasons, it is difficult to accept that a person would suddenly acquire only minus qualities and that he would not know the rules and procedures or lack of confidence. In view of the above, the adverse entries are liable to be quashed. In the circumstances, the adverse entries in the C.R. of the applicant for the

19

year 197<sup>8/</sup>~~9~~ are ordered to be expunged and the application allowed. There will be no order as to costs.

*B.C. Mathur*  
(B.C. Mathur) 16/12/87  
Vice-Chairman