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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 508 1987
~~XXXXX~~

DATE OF DECISION 24.5.1988

Smt. Ila Chatterjee Petitioner

Sri R.V. Subramanyam and Smt. Kamala Subramanyam,
Advocate for the Petitioner(s)

Versus

The Union of India & others Respondent

Shri P.H. Ramachandani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ch. Ramakrishna Rao, Member(J).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)
MEMBER(J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

REGN. No. O.A. 508/87

Date of decision : 24.5.1988

Smt. Ila Chatterjee

... Petitioner

vs.

Union of India & Ors.

... Respondents.

Coram : Hon'ble Mr.Ch.Ramakrishna Rao, Member (J)

For the Petitioner

... Sri R.V.Subramanyam and
Smt.Kamala Subramanyam, Advocates

For the Respondents

... Sri P.H.Ramachandani, Advocate

JUDGEMENT

The applicant entered the Indian Customs and Central Excise Service (ICCES) in June 1961. She ascended several rungs in the ladder of promotion in ICCES and reached the grade of Collector of CCE on 9.11.1979. While she was working in that capacity at Bhubaneshwar from August 1984, she received a letter dated 2nd July, 1986 from the Central Board of Excise and Customs, New Delhi (Respondent-2 : R2) informing her of certain adverse remarks recorded in her Annual Confidential Report ('ACR ') for the year 1985. The applicant represented to R-2 against the said remarks. She received a reply from the Deputy Secretary in the Ministry of Finance, Department of Revenue, intimating that her representation was rejected. Aggrieved, the applicant has filed this application.

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2. Shri R.V.Subramanyam and Smt. Kamala Subramanyam, learned counsel for the applicant, strenuously contend that the instructions issued by the Department of Personnel and Training('DPT') in the matter of recording ACR envisage communication of the substance of the entire ACR including what may have been stated in praise of the officer. According to the learned Counsel, their client is not in a position to know whether any remarks have been made by the Reporting Officer(RO) and the Reviewing Officer(Rev.O) in praise of her work, since only adverse remarks have been communicated to her.

3. Shri P.H.Ramachandani, learned Counsel for the respondents, invites my attention to Paragraph 6.6(vi) of the reply filed on behalf of the respondents, in which it is stated:

"..... As nothing much was recorded in praise of the applicant, no other remarks in the said report were communicated to her. It is submitted that there has been no violation of the general instructions in this regard."

4. In my view, the first two paragraphs of the report of the RO do contain remarks of a complimentary nature touching the work done by the applicant during the year 1985 and it is not open to the Under Secretary, who has filed the reply on behalf of the respondents, to whittle down the effect of these remarks by saying that 'nothing much was recorded in praise of the applicant'. In other words, it is not open to the officer, who communicates adverse remarks made against any Government servant in the ACR, to scan the entire remarks for the purpose of finding out whether much or little was recorded in praise of the Government servant concerned. The officer is in duty bound to comply with the instructions on the subject issued by the DPT and communicate the remarks in toto, which he has not done. This is indeed a serious lapse.

5. Learned Counsel for the applicant next contends that their client worked barely for $4\frac{1}{2}$ and $3\frac{1}{2}$ months under the RO and the Rev.O respectively during the year 1985; that the RO had never

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visited Bhubhaneswar Collectorate during 1985 and the impressions recorded by them of the performance of the applicant in the post held by her, were not based on any tangible material and are attributable to the impressions formed by him from what was conveyed to him by other officers. Such an assessment of the performance of the applicant, according to Counsel, is not in conformity with the instructions governing recording of entries in the ACR issued by the DPT.

6. Shri Ramachandani, with the accent and emphasis characteristic of him, made a four fold submission in rebuttal of the contentions urged on behalf of the applicant. The first is that the scope of judicial review relating to adverse entries in ACR is of a very limited nature and the facts and circumstances of this case do not warrant any judicial review. The second is that both the officers- Reporting and Reviewing - have recorded their impressions of the applicant based on her work and there has been no over estimate or under-estimate of the performance of the applicant by these officers. The third is that the observation made by the RO that the applicant's ability for management of personnel seems to require some improvement, is based on the two instances cited by him and the same was concurred in by the Rev.O. The fourth is that the Rev.O was satisfied that the applicant had fallen short of the expectation of the Government in achieving the target fixed for collection of revenue as a result of her inability to carry the senior staff with her and there is nothing unreasonable in the view taken by the Rev.O.

7. There is force in the contention of Shri Ramachandani that the scope for judicial review is very limited in cases concerning adverse entries in ACR. The nature and extent of judicial review are well brought out in two decisions of the Supreme Court of India, to which I shall refer. In BALDEV RAJ CHADHA v. UNION OF INDIA

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& ORS. [1981 S.C.C.(L & S) page-17], the Supreme Court had occasion to observe:

"It is in public interest to retire a never-do-well, but to judge with confidential reports, when a man's career is at stake, is a confidence trick contrary to public interest. Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making."(Emphasis supplied).

The following observations in R.B.BUTAIL v. UNION OF INDIA(1970) 2 SCC 876 are also apposite:

"..... Such reports(confidential reports) are maintained for the purpose of serving as data of comparative merit when question of promotion, confirmation etc. arise. These reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such a warning is by an order to be kept in the personal file of the Government servant. In such a case the officer making the order has to give a reasonable opportunity to the Government servant to present his case....."(Emphasis supplied)

From the ratio of the two decisions cited supra it is amply clear that the remarks in ACRs are often impressionistic; that the ACRs ordinarily should not contain specific instances based on which assessments are made; that if a censure or a warning is issued to a Government servant a copy of the order containing the censure or the warning should be kept in the personal file of the Government servant and in such an eventuality the officer should be given a reasonable opportunity to present his case since the doctrine of audi alteram partem is attracted. *inf*

8. Turning to the facts of the present case, it is seen from the file containing the ACR of the applicant produced by Shri Ramachandani that until 1977, the Reporting period was from April 1977 to March 1978. In 1978, the reporting period was from 1st April 1978 to 31st December 1978. Thereafter, upto 1.1.1986, the ACRs were being written for the calendar year and not for the Financial year as done upto 1977. This acquires significance because

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the RO had hardly 4 months to watch the performance of the applicant and this is much too tenuous a period for forming any opinion about the traits and quality of performance.

9. I shall first deal with the remarks of the RO, which read as follows :

The resume given by the Officer is enclosed. It shows the over-all good work done by the officer during the year 1985.

I have been seeing Smt. Ila Chatterjee's work from 20.8.85. I have found her to be well informed about her charge and fully in control of it. She has been paying due attention to maximising revenue realisation and stepping up of disposals of all items of work. She has been attending promptly to all the work on the administration side.

She has not been able to get much work done by her Additional Collector. Similarly one of her Deputy Collectors has been found to be on the war path with her. Irrespective of with whom the cause for the lack of cordial relations lies, it would have been desirable for the collector to rough out the differences of opinion with her immediate subordinates and not allowed them to come out in the open and be the subject of loose talk among other staff and even members of the public. Thus Smt. Ila Chatterjee's ability for management of personnel seems to require some improvement.

The RO has spoken appreciatively about the work of the applicant in the first two paragraphs of the report extracted above. The controversy centres round the contents of the third paragraph. The RO has commented on her inability to get much work done by her Additional Collector('AC'). It is implicit in this statement that the applicant was able to get work done by her AC but not to the extent expected by the RO. In other words this is not a case where the applicant was unable to get any work done by her AC and to what extent more work was to be got done by her AC depends on an objective assessment and not on subjective appraisal by the RO. Further, the work of the AC might not have risen to the level expected due to so many other factors over which the applicant might not have had any control.

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10. To me it appears that the words 'much work' suffer from vagueness and before making any adverse entry regarding the quantum of work which the applicant could not extract from the AC, an opportunity should have been afforded to the applicant by the RO to explain her position. This is precisely the reason why the Supreme Court had sounded a note of caution in the case of R.B. Butail cited supra that ACR, should not ordinarily contain specific instances upon which assessments are made. Even assuming for a while that the applicant was not in a position to get much work done by her AC, it does not justify the inference that the applicant had not maintained cordial relations with him.

11. The RO has also alluded to one of the Deputy Collectors being on 'war path' with the applicant, and has chosen to make certain remarks against the applicant. As already noticed the applicant, had worked barely for four months under the RO and presumably because of this he was not in a position to make up his mind on the question whether the applicant or the two officers referred to by him were on the 'war-path', which according to him, 'resulted in lack of cordial relations'. In my view, if the reporting officer wanted to record any adverse remarks in the ACR, it was incumbent on him to have made up his mind as to who was responsible for not maintaining cordial relations. This is not having been done, the adverse remarks made against the applicant are unsustainable.

12. The RO has commented that it would have been desirable for the applicant to have roughed out the differences with her immediate subordinates and not allowed them to come out in the open and be a subject of loose talk among other staff and even members of the public. This, if at all, could have formed the subject matter of a demi-official letter addressed to the applicant by the RO for guidance but should not have found its way to ACR without determining

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who was at fault. Further the RO has made a vague statement that the differences between the applicant and her immediate subordinates resulted ⁱⁿ ~~in~~ 'loose talk not only among the staff but also among members of the public'. The content of the 'loose talk' and who exactly were the members of the staff and the public, who were indulging in such loose talk is not made known. Taking it that such 'loose talk' was there, the RO should not have assumed that the applicant was responsible for the same since he had not chosen as to decide the crucial issue of who exactly was responsible for the lack of cordial relations which led to the loose talk.

13. In this connection, it is noteworthy that the adverse remarks were recorded in the ACR by the RO on 30.4.1986. In the para-wise comments on the representation dated 4.8.1986 made by the applicant, the RO has referred to the discussions held by him after April 1986 with Shri A.k.Saha, who succeeded the applicant as Collector at Bhubhaneswar, which brought the applicant in bad light vis-a-vis Shri Obroi, Addl. Corrector, from whom the applicant could not get much work done and Shri Satpathy, Dy. Collector. These are certainly matters which came within the ken of the reporting officer long after he had recorded the so called adverse remarks. In fact, a discussion of the type which the RO had during his visit to Bhubhaneswar after April 1986, should have taken place before the adverse remarks were recorded in the ACR. Having defaulted to do so, the RO should have given the benefit of doubt to the applicant, the period for which the applicant worked under him being too short. In other words, there was not material on the basis of which the reporting officer could have made any adverse remarks as done by him on 30.4.86.

14. An exposition of the procedure to be adopted by the RO in making entries in the ACR is contained in the decision of a Division Bench of this Tribunal in P.PUTTARANGAPPA v. STATE OF KARNATAKA & ORS A.No.1708/86 decided on 15.4.1987. Speaking on behalf of the Bench,

I had occasion to observe :

"In a normal case where the assessment of an officer's traits, qualities and his performance in the post held by him is done, by the Reporting Officer, there is no scope for introducing any material de hors his own knowledge, about the manner in which the officer concerned has discharged his functions,....."

The allegation itself, we feel, suffers from ambiguity in as much as the so-called political leaders with whom he had links have not been named. An allegation of this kind, can find an entry in the ACR only after full details are furnished to the applicant and he is called upon to explain.

In view of the far-reaching impact the allegation would have on the career of the applicant, he should have been furnished with necessary material so that he could counter the adverse remarks, which were bound to impair his career.

This decision has been followed by another Division Bench of this Tribunal, to which I was a party in TEJINDER SINGH v UNION OF INDIA & ORS O.A.No.799/86 decided on 20.10.1987.

To sum up:

15. / If the RO had merely stated that the applicant's ability for management of personnel seems to require some improvement, it would have been subjective and impressionistic, not calling for interference by this Tribunal. In the present case, however, he could not have said so because of his statement in para. 16 infra. Two specific instances have been relied upon by the RO and based on those instances he came to an adverse conclusion regarding the ability of the applicant for management of personnel, without resolving the issue as to who exactly was on the so-called 'war-path'. He has sought to sustain the remarks by relying on material de hors the material, if any, within his ken on the day he recorded his remarks in the ACR for 1985. Further, the remarks contain vague expressions like 'loose talk' and 'members of the public' which offend the ratio of the two decisions of this Tribunal cited supra. In view of these considerations, the feeling is in-escapable that the remarks made in the third paragraph of the ACR are in the nature of a warning to the applicant regarding her managerial ability, which

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attracts the ratio of the decision of the Supreme Court in R.B.BUTAIL cited supra and as such the doctrine of audi alteram partem is applicable.

16. It now remains to consider the remarks made by the Rev. O for the year 1985. They read as follows :

"I generally agree with the remarks of the reporting officer. Smt. Chatterjee could not carry the senior staff with her and this had affected adversely the working of the Collectorate during the year."

The words 'the senior staff' are obviously a reference to the AC and the Deputy Collector about whom there is mention in the remarks of the RO. The RO in his parawise comments on the representation of the applicant dated 4.8.1986 has stated :

'The adverse remarks recorded by me are with reference to the lack of cordial relations between her and her Additional Collector Shri Obhrai and Deputy Collector Shri Satpathy. I have not made any adverse comments on her relations with the other officers of the Collectorate.'

It is apparent from the comments of the RO extracted above that the applicant had maintained cordial relations with all other members of the staff except the AC and the Deputy Collector. Therefore, the observations of the Rev. O that the applicant could not carry the senior staff with her is relatable only to those two members of the staff, since he has named no other member of the staff.

17. I have held while dealing with the remarks of the RO that the adverse remarks made by him have no basis - legal or factual. In view of this the remark of the Rev. O in this behalf also cannot stand. The Rev. O has drawn an inference that the lack of cordial relations with the senior staff had affected adversely the working of the Collectorate during the year. This statement is somewhat ambiguous since the Rev. O had not spelt out clearly whether it had affected adversely the internal discipline among the members of the staff or the collection of revenue by the Collectorate during the year. Be that as it may, regarding the short fall in the

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collection of revenue by the Bhubhaneswar Collectorate, the Rev D seems to have overlooked that the ACR is only in respect of the calendar year and ^{the} financial year. While assessing the quantum of collection of revenue upto December 1985, it is only reasonable to expect that the Rev D would compare the actual amount collected with the amount collected in the previous year and also examine whether the applicant is likely to reach the target prescribed for the financial year in the next quarter. The assessment of the performance as on 31.12.85, in my view, was bound to be inchoate since three months were still left. On account of the fact that the ACR was written by the Rev D after the completion of the financial year, it is not open to him to re-evaluate the performance as on 31.12.1985 by introducing in his parawise comments data derived during the period from 1.1.86 to 31.3.86. This is precisely what the Rev D has done and to that extent the justification sought to be made by the Rev D regarding the adverse remarks made against the applicant in the ACR for ^{are} 1985 is vitiated. In fact the RO had spoken appreciatively about the applicant regarding the efforts made by her to maximise revenue collections and there is no reason why Rev D should differ from the RO in the matter of revenue collection for 1985, when he chose to agree generally with the remarks made by the RO.

19. It is stated in the parawise comments of the Rev D that Bhubhaneswar is one among the 6 Collectorates which lagged behind in achieving the prescribed target. It is likely that special reasons might have existed for not achieving the target. This is, however, a matter which required fuller scrutiny and the same not having been done, the Rev D was not justified in relying on the so-called lack of cordial relations with the staff ^{as} cannot be the sole factor ^{as} for not achieving the target. In any case, the theory of lack of cordial relations on the part of the applicant has been negatived by me and the RO himself has not made any adverse remark against the applicant in the matter of realising revenues.

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I am, therefore, satisfied that there is no basis for the inference drawn by the Rev. O.

19. It is noted by me from the file relating to the ACRs of the applicant that she had worked in the Collectorate at Bhubaneswar from 1.1.86 to 21.4.86, for which period she had given a resume of the work done by her in the ACR for 1986. The reporting officer for the period 10.6.86 to 31.12.86, however, could not make any comments regarding the work done by her during this period for want of knowledge. Nothing prevented the RO and the Rev. O from recording their remarks in the ACR for 1986, for the period 1.1.86 to 21.4.86. For reasons best known to them, they chose not to do so but have introduced in their parawise comments on the representation made by the applicant, dated 4.8.1986 lot of material adversely affecting the applicant, of which she had not been given any notice. I have refrained from referring to the parawise comments in extenso, though they have ~~a~~bearing on the controversy in the present case, except to the extent necessary for determining the issue involved in this application. I have done so since any attempt to widen the controversy, at this stage, may tend to impair administrative efficiency and undermine discipline.

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20. After giving careful thought, I am satisfied that the adverse remarks of the RO and the Rev O for the year 1985, which were communicated to the applicant deserve expunction and I accordingly direct the respondents to expunge the same.

21. Before parting with the case I would like to sound a note of caution that a reporting officer should be very choosy in his language and assess the performance of any officer working under him with great care and circumspection. In cases where he is not in a position to assess ^{with optimal precision} the performance because of his inability to form any definite opinion within the short period for which the officer worked under him, he should refrain altogether from making any remarks, irrespective

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of the minimum period of three months. This wholesome principle should be kept in view because the remarks made by the reporting officer and the reviewing officer have a great impact on the future career of the officer in matters such as crossing of efficiency bar, promotions etc. To put it differently, the reporting officer and the reviewing officer should adhere to the 'fundamentals of fair play' - to borrow the phrase of Frankfurter J in FEDERAL COMMUNICATIONS COMMISSION v. POTTSVILLE BROADCASTING CO (1940) 309 u.s. p.134 at 143, Otherwise, the purpose for which the ACRs are maintained will be frustrated.

22. In the result the application is allowed with costs, which I fix at Rs.250/- and direct the Respondents to pay the applicant.

23. The directions given in paragraphs 20 and 22 supra shall be complied with by the Respondents and the applicant informed within one week from the date of receipt of this order.

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Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)
MEMBER (J) 24/5/88