

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : DELHI

O.A. 699 OF 1987

Date of decision 3-1-1991

Shri L. Jayaseelan

... APPLICANT

Shri R. L. Chopra

... Counsel for the
Applicant

Vs.

Union of India & Others

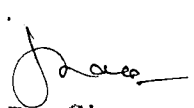
... RESPONDENTS

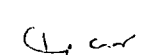
Shri P. H. Ramchandani

... Counsel for the
Respondents

CORAM : HON'BLE SHRI P. C. JAIN, MEMBER (A)
HON'BLE SHRI J. P. SHARMA, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgment ? *yes*.
2. To be referred to the Reporter or not ? *yes*.
3. Whether their Lordships wish to see the fair copy of the Judgment ? *No*.
4. To be circulated to all Benches of the Tribunal ? *No*.


(J. P. Sharma)
Member (J)


(P. C. Jain)
Member (A)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 699 of 1987.

Date of Decision: January 3, 1991.

Shri L. Jayaseelan Applicant.

V/s.

Union of India & Others Respondents.

CORAM: Hon'ble Shri P.C. Jain, Member (A).
Hon'ble Shri J.P. Sharma, Member (J).

Shri R.L. Chopra, Counsel for the Applicant.

Shri P.H. Ramchandani, Counsel for the Respondents.

(Judgment of the Bench delivered by
Hon'ble Shri P.C. Jain, Member (A))

JUDGMENT

Aggrieved by an adverse remark recorded by the reviewing officer (respondent No.3) in his A.C.M. for the year 1984, the applicant, who is an officer of the Indian Customs and Central Excise Service, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for expunction of the same.

2. During the period 1982 and 1984, the applicant was posted as Deputy Collector of Customs and Central Excise, Amritsar. For the year 1984, i.e., 1.1.1984 to 31.12.1984, the reviewing officer recorded the following remarks: -

".....At the crucial moment, he tends to lose his nerve; otherwise a good officer."

While communicating the above remarks which were recorded by the reviewing officer against column 11 in part-IV - Remarks of the Reviewing Officer - he was also informed vide confidential D.O. letter dated 24.10.1985 (Annexure A -4) that his "work has otherwise been reported well." Column 11 ibid reads as below:

"11. Do you agree with the Reporting Officer in regard to his remarks on the resume of the work done by the officer as contained in Part II of the Report? If not, indicate briefly the reasons for disagreeing with Reporting Officer

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and the extent of your disagreement."

The applicant made a representation to the Chairman, Central Board of Excise and Customs on 13.11.1985 (Annexure A-5).

The same was rejected vide letter dated 18.3.1986 (Annexure A-6). He filed an appeal to the President of India on 2.4.1986 against the Board's decision on his representation. The same was rejected vide letter dated 5.8.1986 (Annexure A-8).

3. The applicant's case is that the reviewing officer did not give any reasons for his disagreement with the assessment of the reporting officer although the column¹¹ as extracted above specifically required him to do so and that no material has been given by the reviewing officer on the basis of which he might have made the aforesaid adverse remarks. In these circumstances, the applicant was also handicapped in making a proper representation. He claims it to be a case of non-application of mind by the reviewing officer. The orders on his representation and his appeal to the President of India are stated to be non-speaking. He also contends that the adverse remark is contradictory to the remarks "otherwise a good officer", as if an officer who is otherwise a good officer and whose work has been reported well, how can he tend to lose his nerve. He, therefore, alleges the adverse remark to be erroneous, subjective and impressionistic. He has also stated that the reviewing officer has had no occasion to see his performance and that he never visited his charge at Amritsar. It is also contended that no proper and reasonable opportunity had been given to the applicant to render a proper explanation for consideration in the absence of disclosure of material upon which the reviewing officer passed his adverse remark and differed with the reporting officer.

4. The case of the respondents is that there was an incident when the applicant had deserted his post by leaving the headquarters without permission in the wake of an

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anonymous or pseudonymous threat signed as "Bhindrawale." The applicant was at that time asked to give complete details as to what made him to leave the headquarters without permission and that the note given by him was considered and a serious view was taken. The remarks are thus stated to be justified. It is stated that as the reviewing officer had not disagreed with the reporting officer the reasons were not given. It is also stated that confidential reports reflect the impression of reporting and reviewing officers, and that the matter concerning the adverse remarks is purely administrative and not justiciable and thus beyond the jurisdiction of the Tribunal. It is also stated that "there is no practice of passing any speaking orders", and that a perusal of the memorial to the President shows that the applicant was fully aware of the reasons for the aforesaid adverse remarks. According to the respondents, it is not necessary that one must visit the place of posting of an officer or directly see all his performance for having knowledge of his work and conduct.

5. The applicant rebutted the contentions of the respondents by filing a rejoinder. At the time of final hearing none appeared for the applicant. We have perused the material on record and also heard the learned counsel for the respondents.

6. We are unable to uphold the plea of the respondents that the matter under consideration is not within the jurisdiction of the Tribunal. It is well settled that even executive actions of the Government are subject to judicial review if they violate any law or rules or executive instructions or are violative of the principles of natural justice. If an action of the executive is found to be arbitrary, it has to be held as violative of Article 14 of the Constitution.

7. In the face of facts before us, it cannot be disputed that the remarks recorded by the reviewing officer do not disclose the basis on which he recorded the aforesaid adverse

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remarks. Even if an incident, as stated by the respondents, had taken place as alleged, the communication to the applicant did not indicate, directly or indirectly, that the adverse remark was based on that incident. In such a situation, the applicant must have felt handicapped in making his representation to the Chairman, Central Board of Excise and Customs. Further, it is admitted by the respondents that an explanation had been called from the applicant in regard to the aforesaid incident and his explanation was considered. If the applicant was found guilty of any dereliction of duty with reference to the aforesaid incident, he should have been proceeded against in accordance with the rules so that he would have had a reasonable opportunity of defending himself. But no action was taken. Moreover, the Government instructions on the subject clearly state that an isolated or a single incident should not be the basis of assessment of the work and conduct of an officer. Here admittedly the reviewing officer who had neither visited the charge of the applicant nor directly seen his work has recorded an adverse observation, probably on the basis of the aforesaid incident. It has been held by the C.A.T. in a number of judgments that the orders passed on representations against adverse remarks should be speaking orders. For example, in the case of E.G. Nambudri Vs. Union of India & Another : ATR 1987 (2) CAT 360 the Tribunal observed as below :

- "6. 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 bald order is passed rejecting the representation, it could be constituted that the concerned authority had not applied its mind."

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In Madan Mohan Khatua Vs. State of Orissa and Others : 1978 (1) SLR 829 (Orissa) it was held that representations against adverse entries should not be disposed of by bald order and that the appropriate authority should dispose it of in such a manner which indicates that the grievance made in the representation is taken into consideration.

8. In the case before us the order rejecting the representation made to the Chairman, Central Board of Excise and Customs and the order rejecting the appeal/memorial to the President of India do not disclose the reasons for rejecting the same.

9. In the light of the foregoing discussion, we are of the view that the following adverse remarks recorded by the reviewing officer (respondent No.3) in the ACR of the applicant for the year 1984 cannot be sustained and are accordingly directed to be expunged :

"...At the crucial moment, he tends to lose his nerve;..."

The application is allowed. However, on the facts and in the circumstances of the case we leave the parties to bear their own costs.

J. P. Sharma

(J. P. SHARMA)
MEMBER (J)

P. C. Jain
(P. C. JAIN)
MEMBER (A)