

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 23/90

Date of Decision : 22.3.93

Shri Lajja Ram

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri Madhav Panikar, counsel

For the Respondents

...Shri A.K. Behra, proxy counsel
for Shri P.H. Ramchandani,
counsel

JUDGEMENT

The applicant belongs to Indian Customs and Central Excise Service of 1964 batch and was posted as Collector, Central Excise and Customs, North U.P. Collectorate at Meerut in the year 1980. The applicant was given certain adverse remarks in his confidential report for the period from 1.1.1985 to 31.12.1985 which was communicated to him on 13.8.1986. The applicant made a representation against the same on 9.9.1986. The representation was considered and a part of the adverse remarks 'However, the control of staff is only average' was ordered to be expunged by the Memo dt.13.3.1987. The applicant again represented on 25.1.1988. On this representation by the communication dt.9.9.1988, the Ministry of Finance informed the applicant that for the adverse remarks for the period from 1.1.1985 to 31.12.1985, a part of the same 'Requires to take a far more strict attitude towards the staff' has been expunged. The applicant again filed a memorial to the President since no

decision was conveyed to the applicant. However, vide

communication dt. 25/27.9.1989, the applicant was informed

that his request for expunging the adverse remarks could

not be acceded to. The adverse remarks outstanding

against the applicant for the relevant period are as

follows :-

"Revenue realisations were not upto the mark. During the financial year 1985-86, the revenue collections were short of the target by 8.2 per cent for the nine months that he has charged as against All India average shortfall of 3.9 per cent. This shortfall is not explainable because both Delhi and Punjab who were the adjoining states, did much better."

2. In this application under Section 19 of the

Administrative Tribunals Act, 1985 filed on 4.1.1990, the

applicant has prayed that a direction be issued to the

respondents to expunge the adverse remarks outstanding

against the applicant in the CR for the period from

1.1.1985 to 31.12.1985.

3. The respondents contested this application and

opposed the grant of the relief, prayed for by the

applicant. It is stated that the representation of the

applicant has been objectively considered and the adverse

remarks were ordered to be expunged to the extent :- "However,

the control of the staff is only average" and "Requies to

take far more strict attitude towards the staff." It is

further stated that no reasons are required to be communicated

for rejection of the representation/memorial etc. The

remaining adverse remarks were purely factual one. It is

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further stated that the corresponding figures of the same collectorate for the subsequent year (1986) would reveal that the performance improved after the applicant relinquished his charge of the Meerut collectorate.

4. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The main contention of the learned counsel for the applicant is that the collections in the Meerut collectorate were being made according to the targets and they were higher than the other collectorates in U.P. and at par with All India level. It is, therefore, argued that there is no question of the applicant not fulfilling his targets; ^{that} The concerned authorities should have given a specific instance as to when and where the applicant failed to achieve his target and revenue collections. ^{It is argued} The aforesaid adverse remarks, therefore, are in violation of all the various rules and instructions and have not been written with the slightest decree of objectivity, impartiality. The learned counsel for the applicant drawn a comparison of the targets of revenue collections in the Meerut Collectorate with two other collectorates in U.P., namely, Allahabad and Kanpur. Along with the rejoinder, certain figures have also been annexed and also have been tendered during the course of the arguments of various collectorates. Firstly, it is borne out that the

administration has only reported in the remarks of the applicant factual statistical statement objectively. In the application or in the rejoinder or during the course of the arguments, the learned counsel could not show that the observation made in the adverse remarks is wrong. The comparison regarding the achievement of targets with other collectorates would not by itself be ^{measure} ~~major~~ of the calibre and work of a person. There is a specific averment in the counter that there was improvement in the figures of the Meerut Collectorate for the subsequent year, i.e., 1986 after the applicant has relinquished the charge of the Meerut Collectorate. The applicant in the rejoinder only averred that what has to be reckoned in the present case is the applicant's performance in the year 1985 for which the adverse remarks were communicated and taking of the subsequent year in consideration is of no relevance. In fact the work of the applicant has been judged on the basis of the statistics drawn for that particular year of the period under review and the above quoted remarks in the character roll of the applicant only go to show that what has been is the shortfall as compared to the national level.

5. The learned counsel for the applicant also argued that the applicant has since been promoted and the adverse remarks, therefore, should not be considered in any of his further promotions. In this connection, the learned counsel for the applicant has referred to the decision in

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OA 925/88 (A.K. Chabra Vs. UOI) decided on 12.8.1992, but that judgement was given on the basis of certain concession given by the learned counsel for the respondents, which is quoted below :-

"The learned counsel for the respondents also to some extent conceded to the proposition of law that promotion was effected. The above remarks if at all which could have effected the promotion, cannot be treated as adverse."

In view of the above, it was observed in the judgement that the remarks in question given to Shri Chabra in the ACR for the period from 1.1.1986 to 31.12.1986 should not be treated as adverse to the applicant. In fact the same counsel, Shri A.K.Behra opposed the present application and he has emphatically opposed the grant of any such relief this time to the present applicant. In the aforesaid judgement of Chabra, reliance was placed on the judgement of the Hon'ble Supreme Court in the case of Baij Nath Mahapatra Vs. State of Orissa & Anr., Judgement Today 1989 (3) SC p-360. The Hon'ble Supreme Court has made an observation, "When a Government servant is promoted to a higher post on the basis of merit and selection, adverse remarks if any, contained in the service record lose their significance and those remain on record as a part of past history. It would be unjust to curtail the service career of a Government servant on the basis of those entries in the absence of any significant fall in his performance after his promotion."

6. In the present case, however, most of the adverse

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remarks have already been expunged by the respondents on the basis of the representation made by the applicant himself and what remains on record is only the factual statistical statement. Those statements cannot be expunged as this Tribunal cannot sit as an Appellate Authority over the administration in calculating the various figures in the relevant year nor there is any data available in that regard. It is not the case where there is any demonstration of malice in fact ^{or} ~~of~~ mala fide against the reporting or reviewing officer. The reporting officer has judged the work of the applicant objectively on the basis of various facts and figures of the relevant period. Merely comparing the performance of the other collectorates with certain facts and figures would not in any way be taken into account to judge the performance of the applicant in the period under review. The contention of the learned counsel for the applicant that he was not at any time informed about the said short fall and the learned counsel for the respondents has directly pointed out that the targets for each collectorate are fixed in the beginning of the financial year itself and the monthly performance would be there for all concerned to see and take such steps as would be necessary to achieve the targets. This ^{of the Respondent's Counsel} argument has some force.

7. In view of the above facts and circumstances, the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

AKS

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

22.3.93