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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

U.A. 2794/1991

DATE OF DECISION: 18.9.1992

R.M. Ramchandani

.. Applicant

vs.

Union of India through
Secretary, Ministry of Finance,
Department of Revenue,
North Block, NEW DELHI-11001 and
Others.

.. Respondents

For the Applicant

.. Shri Madhav Panikar,
Advocate.

For the Respondents

.. Smt. Raj Kumari
Chopra, Advocate.

C O R A M

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? No

J U D G M E N T

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 18th November, 1991 the applicant who has been working as Additional Collector of Central Excise, Bombay has challenged the impugned order dated 29th May 1991 at Annexure AI rejecting his representation dated 11.1.1991 against the adverse remarks given to him for the period from 15.9.1988 to 31.3.1989. The brief facts of the case are as follows.

2. The applicant was given the following adverse remarks in his Annual Confidential Report for the year 1988-89:-

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"Remarks given by the Reviewing Officer(Principal Collector)".

"In this period, Shri Ramchandani was totally ineffective in controlling his immediate subordinate A.C. Shri A.R. Prasad and other Customs Officers under this A.C. That later C.B.I. registered cases against the A.C. and several other subordinate Customs Officers. His own integrity is highly doubtful and required watch. In the circumstances, he should be considered as below average".

Remarks of the Countersigning Officer(the then Member).

" I agree with the remarks of the reporting authority. A totally unreliable officer , not fit for the revenue department". These remarks were communicated to Shri R.M. Ramchandani, vide Ministry's letter F.No.A-28017/13/89/EC/PER, dated 12.9.89. He preferred a representation dated 16.10.89 against the aforesaid adverse remarks. His representation was carefully considered by the competent authority in the light of the remarks of the reviewing officer and the countersigning officer and it was decided to expunge the following remarks.

Remarks of the Reviewing Officer.

"His own integrity is highly doubtful and required watch".

Remarks of the Countersigning Officer.

"not fit for revenue department".

The other remarks were retained as duly substantiated. However, the period of report from 1.1.88 to 14.9.88 was treated as 'no report period' since the reporting officer was undergoing suspension from 27.2.89 and therefore not eligible to write the Annual Confidential Report after 30.4.89 and the earlier reviewing officer Shri S.N. Karkhanis has since retired and therefore not competent to review the Annual Confidential Report after his retirement.

3. Aggrieved by the Ministry's decision on the representation dated 16.10.89 conveyed to Shri Ramchandani vide letter F.No.A-28018/54/89-EC/Per dated 7.1.91, Shri Ramchandani, preferred another representation dated 11.1.91 which was considered and rejected by a speaking order detailing various grounds vide letter No. A.28018/54/89-EC/Per dated. 29.5.91."

3. The applicant has challenged the impugned order on the ground that his Reporting Officer for the period 1988-89 was Shri M.C.Sharma, Collector, Trichy, who was under suspension from 27.2.89. Since under the instructions, the Annual Confidential Report could have been written by Shri Sharma within two months from the date of his having placed under suspension or within one month from the date on which the report was due, whichever is later, the applicant had been directed by the respondents on 4.4.89 at Annexure A2 to complete Part I and Part II of the CR form in duplicate about his self assessment and "furnish the same to your Reporting Officer Shri M.C.Sharma, Collector of Customs & Central Excise No.27, South Extension, Ramalinga Nagar, Vayalur Road, Trichy urgently". The applicant's grievance is that he had submitted his self-assessment report in compliance of the communication to Shri M.C.Sharma on 10.4.89, but his report was written not by Shri M.C.Sharma but by his Reviewing Officer, Shri Govind Raj who was then the Principal Collector of Customs & Central Excise, Madras without incorporating the applicant's self-assessment report. He has alleged that Shri Govind Raj bore animus against him and he manipulated the circumstances in such a manner that his Reporting Officer Shri M.C.Sharma under suspension could not write the report so that Shri Govind Raj is at liberty to write the adverse reports

without being in any way obstructed by the report which should have been written by Shri M.C.Sharma. He has argued that the adverse report that the applicant "was totally ineffective in controlling his immediate subordinate Assistant Collector Shri A.R.Prasad and other Custom Officers under this Assistant Collector and several other subordinate Custom Officers ..." is unwarranted as the applicant cannot be held responsible for the misdeeds of his subordinates. If this logic is accepted, Shri Govind Raj himself should have been given an adverse report because his immediate subordinate Shri M.C.Sharma had been placed under suspension. He has also alleged that Shri Govind Raj not being his immediate superior officer could not fill up the various columns in the C.R form which was to be filled up by the Reporting Officer and he had very little familiarity with his work. Shri Govind Raj visited the Trichy Collectorate only once during the reporting period. Shri Govind Raj had given the adverse entry about his integrity without following the procedure prescribed for recording such an entry. He had not prepared a separate secret note or maintained a confidential diary for the instances about doubting his integrity. The applicant has given various figures of his performance regarding seizure, disposal of confiscated goods and Customs Revenue to show that he had actually exceeded the target ^{and also} ~~from~~ previous year's performance. In these circumstances, his being dubbed as being 'below average' is unwarranted.

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4. In the counter affidavit the respondents have denied that respondent 3 had any malice against the applicant. They have stated that for the reporting period from 1.1.88 to 31.3.89, a part of the period from 1.1.88 to 14.9.88 had been treated as 'no report period' because the Reporting Officer had been under suspension from 27.2.89 and was not competent to initiate the report and the Principal Collector had retired on 14.9.88 without reviewing the report. They have stated that the reviewing officer^{Shri} S.A.Govindraj who reviewed the report for the period 15.9.88 to 31.3.89 had seen his work for more than 5 months. The applicant did not submit any resume to him and also did not take any care to keep his superiors informed about the position at the airport². They have stated that since Shri M.C.Sharma did not write the report within two months from the date of his suspension, Shri Govindraj had to write the report.

5. In the rejoinder the applicant has stated that the ^{respondents} ~~reports~~ vide their communication dated 4.4.1989 at Annexure-2 in which the residential address of Shri M.C.Sharma was given wherein the applicant was directed to submit his report, fully knew that Shri M.C.Sharma was under suspension. He complied with the direction and sent his resume along with his ACR form on 10.4.1989. He was never directed by Shri Govindraj or others that since Shri M.C.Sharma had not written the report within two months from the date of suspension, the resume should be sent to

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respondent No.3 also, he did not do so. He has also argued that the alleged instances that took place in Trichy airport were in the period July-August 1988 which has been created by the respondents themselves as a 'No Report Period' and therefore those instances could not be taken into account for commending on his performance.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In the penultimate para of the impugned order, the following observations have been made:-

"It is also observed that the Principal Collector wrote your report as required under the instructions without your resume as you did not submit it to him though you were aware that the Collector concerned had been placed under suspension."

It is clear from the above that the adverse remarks were recorded by the competent authority without having the resume of the applicant's performance before him. A part of the adverse reports which ^{was} ~~were~~ communicated to him on 12th September, 1989 vide Annexure-5 had been expunged by the communication dated 7th January, 1991 at Annexure-4. The remaining adverse remarks against which the applicant has come up are as follows:-

"(a) In this period Shri Ramchandani was totally ineffective in controlling his immediate subordinate A.C. Shri A.R. Prasad and other Customs Officers under this A.C. In the circumstances, he should be considered as ~~Below~~ average."

(b) A totally unreliable officer."

If the Reporting Officer had the resume of the applicant's

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performance, we are confident that the aforesaid adverse remarks would not have been recorded. The performance of the applicant as given by him in the D.A. ^{and not denied by the respondents} is quoted below:-

<u>#Description of item of work</u>	<u>Target Fixed</u>	<u>Target achieved</u>	<u>Remarks</u>	
1.Seizure	719.90 lakhs	890.40 lakhs	Target exceeded(in 1987 seizures where 5.96 crores)	
2.Disposal of confiscated goods	8.55 crores	8.90 crores	Target exceeded (In 1987 the disposal was 5.20 crores).	
	1987-88	1988-89		
	(Rs.in crores)			
	S.B.E.	Net Revenue <u>Realised</u>	S.B.E. Net Revenue <u>Realised</u>	Remarks
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
3. Customs Revenue	44.94	39.25	51.77 52.14	**
% of net Revenue	87.3		100.7	
% of perfor- mance of Trichy Co- llectorate against all India Revenue Realised.	0.29		0.33	"

By no stretch of imagination can the aforesaid performance be considered to be 'below average'. By the communication dated 7th January 1991 the adverse remarks about his integrity and his 'not fit for revenue department' had been expunged. In these circumstances there no reason to maintain the adverse remarks that the applicant is a totally unreliable officer. In view of his performance we cannot say that the applicant was totally ineffective in controlling his immediate subordinate Shri A.R Prasad

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and other Customs Officers. We agree with him that he cannot be held responsible for the lapses on the part of his subordinates. No instance has been cited for which the applicant can be held responsible and which occurred between the reporting period from 15.9.88 to 30.4.89.

7. In the conspectus of facts and circumstances, we allow the application, set aside the impugned order at Annexure-1 and direct that the adverse remarks communicated to ^{the applicant} ~~him~~ and as quoted at (a) and (b) on page-6 (para 6) shall be expunged. There will be no order as to costs.

S. S. Oberoi
(T.S.OBEROI)
JUDICIAL MEMBER

S. P. Mukerji
18-9-92
(S.P.MUKERJI)
VICE CHAIRMAN

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