

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

D.A. No. 2905/92.

DATE OF DECISION 11. 6. 1993

<u>SHRI A.K. MADAN</u>	Petitioner
<u>SHRI A.K. SIKRI,</u>	Advocate for the Petitioner(s)
Versus	
<u>UNION OF INDIA & OTHERS</u>	Respondent
<u>SHRI R.R. BHARTI,</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.S. HEGDE, MEMBER (JUDICIAL)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?✓
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985 against the impugned orders dated 19.12.1991 and 14.8.1992 respectively of the respondents rejecting the request of the applicant for review of his ACRs for the years 1988-89, 1989-90 and 1990-91 (Annexures A-1 and A-2). Accordingly, he has prayed for the following reliefs :-

- (1) To declare and direct the respondents to

expunge the construed adverse remarks of

Reviewing Authority (Respondent No. 3)

in the ACRs of the applicant resulting

in downgradation of "Very Good" grading

to only "Good" for the years 1989, 1990

and 1991.

(2) To pass appropriate order and direction to quash and set aside the Respondent's letters dated 19.12.1991 and 14.8.1992 (Annexures A-1 and A-2 respectively).

2. The applicant has also prayed for interim order to direct the respondents to promote the applicant on ad hoc basis by convening a Review D.P.C. within a period of one month from the date of the interim order.

3. The brief facts of the case are that the applicant joined the Central Board of Excise & Customs as Appraising Officer through U.P.S.C. on 21.2.1971 and he was promoted to the grade of Assistant Collector w.e.f. 20.2.1981.

Thereafter, he was posted under the designation of Technical Officer in the Tax Research Unit under the Central Board of Excise and Customs in 1986 where he continued to serve till 1991. He contends that during the period of his tenure

from 1986 to 1991, he served in the most sensitive and prestigious unit of the Central Board of Excise and Customs, namely, the Tax Research Unit. The officers before being posted in the Tax Research Unit were screened on merit and cleared by the Intelligence Bureau of the Ministry of Home Affairs from the angles of integrity, conduct and security. He also contends that he enjoyed the trust, faith and confidence of his superior officers in the matter of selection for posting to the Tax Research Unit and he continued to enjoy the same trust and confidence during the entire period of his tenure of about five years in the said Tax Research Unit. He states that he was never communicated any reprimand or displeasure, verbally or in writing, by any of his superior officers. Accordingly, he believed that his performance was outstanding or very good. He concedes that the promotion to the post of Deputy Collector is on the principle of selection on merit of officers in the grade of Assistant Collector and also that the officers with the minimum five years regular service in grade V failing which 9 years combined regular service in grades V & VI taken to be eligible for the promotion to Grade IV.

..

He further contends that his immediate superior officer i.e. Reporting Officer had assessed his performance as "Very Good" during the years 1989 to 1991 but the Respondent No. 3, who had by then became the Reviewing Authority for the purpose of writing the applicant's ACRS for the aforesaid period brought vengeance to pay havoc with the career of the applicant and assessed him as "Good", and thereby his promotion to the post of Deputy Collector could not be done.

4. The Respondents, in their reply, stated that the work in the Tax Research Unit is of secret nature and, therefore, officers are posted to work in that Unit after thorough screening. The performance of the applicant during the period he worked in TRU has been evaluated and assessed by his superiors through his Annual Confidential Reports for the period. The applicant's exaggerated notion of his own conduct and performance are meaningless. The mere fact that the applicant was not given any reprimand or displeasure does not ipso-facto means that his performance as such

kmjde

as to deserve "outstanding" or "very good" grading as stated by him. It is for the reporting officer and reviewing officers to assess his performance, which they did in adherence to the instructions and which is reflected in his ACRs. Since the applicant has made certain allegations against Respondent No. 3, who was the Reviewing Officer for the applicant, he has filed a separate affidavit denying all the allegations made against him by the applicant.

5. The Respondents have denied the various allegations made in the petition and submitted that Respondent No. 3 in his capacity as Reviewing Officer, has recorded his assessment in conformity with the relevant instructions and the applicant has made absolutely baseless allegations against him which are totally unsubstantiated and lack any grounds in support thereof. Since the ACRs of the applicant are written by the reporting and reviewing officers in conformity with the general instructions on the subject, there was no need for interference by the respondent No. 1 and 2 and accordingly the representation of the applicant had to be rejected. It is further submitted that the remarks in the ACRs reflect the assessment of the performance of the officer reported

Kmepke

upon by the reporting and reviewing officers who have seen the work and the conduct of the officer; Of the five gradings namely, 'Outstanding', 'Very Good', 'Good', 'Average' and 'Below Average', 'Good' grading is not considered adverse. If a criteria is prescribed for promotion and emphasis is made on a level of efficiency for promotion, the assessment below the level cannot be construed adverse unless it adversely reflects on his performance or reveals shortcomings or defects of which he gets an opportunity to remove. Since the assessment on the applicant does not reveal any shortcoming in his work, the rulings relied upon have no relevance. The mere fact that the applicant did not satisfy 'benchmark' does not make assessment adverse or vitiated. There were no remarks which required communication. Hence, no rule of law has been violated.

6. I have heard the Learned Counsel for the parties and perused the various documents adduced before me. After completion of hearing, the respondents have produced the ACRs of the applicant and the DPC proceedings before me and after going through the same I am satisfied that the stand taken by the respondents is justified under

R. Nagarkar

the circumstances. On perusal of the ACRs right from 1985 onwards, I find that the applicant has been graded only "Good" right from the beginning till 1991-92. It is true that the Reviewing Authority, after going through the remarks of the Reporting Officer, has come to the conclusion that the grading accorded by the Reporting Officer is over-graded and it is clearly observed that his out-put, at best, be treated as 'Good' and he has given reasons for the same for all the three years from 1989 to 1992. The Reviewing Authority has assessed him 'Good' for which he has assigned reasons. It is not only for these three years his assessment has been down-graded even earlier period. Right from 1985 onwards, he has been assessed only as 'Good'. Therefore, it is incorrect to state that Respondent No. 3 is biased and mere false statement would not be sufficient, unless there is some documentary proof to show. In the instant case except the bald statement, there is nothing to prove on records that the respondent No. 3 is biased on him. Further the person who work in Tax Research Unit, invariably screening is done for security reasons and not for any other purpose. Therefore, the applicant cannot claim that it is a matter of special privilege

BBM

to work in TRU. It is only the performance that is the above average and performance that is really noteworthy which should entitle an officer to recognition and suitable reward to officer for a matter for promotion. It is an undisputed fact that the ACRs on the basis of which assessment is to be made by each DPC on the basis of service record and with reference to the CRs for five preceding years. Having regard to the post to which promotions are to be made the nature and importance of the duties attached to the nature and importance of the duties attached to the post, a 'bench-mark' grade would be determined for each category of post for which promotions are to be made by selection method.

7. It is submitted by the respondents that the officers and staff working in TRU are only granted honorarium every year during the budget preparation and grant of honorarium does not imply that the recipient of performance is 'outstanding' or 'very good' category.

8. The Learned Counsel for the applicant has relied upon the following decisions in support of his contention:-

Abnay
(i) 1998(6) ATC 385 - Sashidharan vs. Sudhir,
Dy. Collector of Excise & Customs, Madras.

wherein the Tribunal has observed that the consequence of unjustified remarks in the CRs and also stated that objectivity and impartiality in assessment is essential. In so far as adverse remarks unless countersigning has any personal knowledge of the reported employee unsatisfactory work and conduct normally no such adverse remarks should be made against him.

(ii) 1989 (2) ATC 654 - M.K. Dixit vs. UOI

The Tribunal has observed that the adverse remarks if it is uncommunicated can be taken into consideration by the DPC. In that case, the question before the Tribunal was that the adverse remarks could be taken into consideration by the DPC and whether the remarks on integrity could be held as valid when they are not recorded after following the prescribed procedure. Accordingly, the said order was quashed.

TKM
(iii) 1990 (13) ATC 633 - Ramesh Chandra Misra vs. State of Orissa.

It was held therein that Accepting Authority

cannot give his remarks without receiving from the Reporting and countersigning officers. It is further observed that the classification is to be based on overall assessment of the service record of the person concerned. The aforesaid judgement cited by the applicant's counsel does not appear to have any bearing on this case. It is clear that in the instant case there was no adverse remarks against the applicant and his own imagination that he ought to have been given 'outstanding' or 'very good' and as mentioned above the performance of the applicant right from 1985 onwards was treated as only 'good' and not even 'very good'. That being the position, Respondent No. 3 has filed an affidavit denying the allegation made by the applicant. Since, he was the Reviewing Authority, he alone was competent to assess the work of the applicant and no one else. Therefore, the reason for rejecting his representation under the circumstances

Abhey

was justified. Even the Supreme Court in Express Newspaper vs. UOI [AIR 1986 (SC) 872] AND ALSO IN Royappa's case observed that where malafide are alleged it is necessary that the persons against whom such allegations are made should come forward with answer refuting or denying such allegations or otherwise the allegations remained unabated and unanswered on the test of propriety.

In the instant case though the allegations of the respondents are remote and the applicant does not charge the Respondents with any malafide and nothing has been alleged against the Respondents, especially Respondent No. 3 with any definite charge despite the fact, that respondent No. 3 has filed an affidavit refuting the allegations and as mentioned above on perusal of the record, I am convinced that the observations made by the respondent No. 3 is just and reasonable and the same cannot be construed as adverse remarks.

9. For the reasons stated above, I am of the view, that there is no need to give any direction to the respondents to review his CRs and to expunge the remarks made in the ACRs allegedly adverse remarks. Accordingly, the

(20)

relief sought in prayer (a) is not valid and tenable.

10. In view of the above, the question of quashing the respondents letters dated 19.12.1991 and 14.8.1992 (Annexures A-1 and A-2) respectively does not arise.

11. In the above conspectus, this O.A. is liable to be dismissed and accordingly, I dismiss this O.A. with no order as to costs.

B.S. Hegde 11/6/93
(B.S. HEGDE)
MEMBER (JUDICIAL)