

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 943/92

Date of Decision : 08.01.1993

Shri M.S. Arora

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...Shri L.P. Asthana, counsel

For the Respondents

...Shri J.C. Madan, proxy counsel
for Shri P.H. Ramchandani, counsel

1. Whether Reporters of local papers may be allowed to see the Judgment? *Ys*

2. To be referred to the Reporter or not? *Ys*

JUDGMENT

The applicant has assailed the order dt. 27.3.1991 by which the representation of the applicant against the adverse ACR for the period from 1.3.1987 to 30.4.1987 was considered and the remarks given to the applicant in part were expunged and the remaining remarks communicated to the applicant by the order dt. 22.8.1988 at No. (b) and (d) have been retained. The applicant at the relevant time in the period under review from 1.1.1987 to 1.5.1987 was working as Assistant Collector, Preventive in Collectorate of Central Excise, Allahabad. The adverse remarks which remain in the character roll of the applicant after the disposal of the

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representation by the aforesaid order are as follows :-

(b) He never submitted his diary regularly with the intention of manipulating it according to the requirements of the time. During his stay of 18 months as Assistant Collector (Preventive), he submitted his diary on 3 occasions.

(c) He went about his work with indifference and carelessness. Most of the cases which he made were not properly investigated into and gave the appearance of being made for the sake of raising the statistics. Throughout the period he showed no inclination towards improving himself. He was unwilling to take criticism, in fact, he resented any supervision.

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for expunging the adverse remarks and further to hold that the supervisory officer was biased and gave adverse remarks without any evidence or basis and that the Government of India did not apply its mind nor gave a proper consideration to the representation made by the applicant.

2. The allegations made in the application for expunction of the adverse remarks are that the said remarks are given in violation of the principles of natural justice and the Government of India had disposed of the representation without a speaking order. That the reporting officer was biased and acted in a mala fide manner. That the said order by the competent authority has been passed without taking into

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consideration the Ministry of Home Affairs OM dt. 31.10.1961 which provides that the officers superior to the reporting officers should, therefore, consider it his duty to personally note and form his own judgment of the work and conduct of the officer reported upon. He should accordingly exercise positive and independent judgment on the remarks of the reporting officer under various detailed headings in the form of the report as well as on the general assessment and express clearly his agreement or disagreement with those remarks. This is particularly necessary with regard to the adverse remarks, if any, where the next of the higher officer shall be considered as a correct statement.

3. The respondents contested this application and stated that the application is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The applicant never demanded a personal hearing. Now on that account, the applicant should not have any grudge. The applicant has not given any cogent facts to justify that the reporting officer was biased or prejudiced against him. The instructions of the Ministry of DOP&T referred to by the

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applicant have not been flouted. The applicant has not submitted XII diary maintained by the Executive Officers of Central Excise working in the division and ranges including the Assistant Collector, Group 'A'. This para reflects the day-to-day activity of the officer thereby enabling his superior to adjudge the role and performance of the officer. A memo dt.10.6.1987 was also served upon the applicant to explain the delay in submission of XII diary for the period from 1.10.1986 to 30.4.1987. Further it is stated that the applicant was issued a Memo dt.8.6.1987 by the Collector of Central Excise, Allahabad for his failure to issue show cause notice to M/s Khanna Jewellers, Allahabad within the stipulated period of six months even though the case did not call for a detailed investigation. As a result of this lapse, on the part of the applicant, seized gold ornaments worth Rs.5,66,300 were required to be released to M/s Khanna Jewellers' under Orders dt.25.3.1987 of the Hon'ble High Court, Allahabad.

4. The applicant has also filed the rejoinder and reiterated the averments made in the OA. It is further stated that the remarks appearing in p-1(d) in the letter dt.22.8.1988 (Annexure A) are a corollary to remarks in para 1(c). Therefore,

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logically once the remark in para 1(d) was expunged, the remark in para 1(c) should have also been expunged. It is further stated in the rejoinder that if as a matter of practice, the applicant had submitted his diary for a certain period. It did not imply that there was a requirement under the rules or the procedure and, therefore, the applicant cannot be adversely commented upon for something which is not expressly provided in any rule or procedure.

5. I have heard the learned counsel for the applicant at length. Taking the adverse remarks for non submission of the diary regularly with the intention of manipulating it according to the requirements of the time, the learned counsel for the applicant has referred to para 5(e)(i)(ii) and (iii),
of the Tobacco Manual to substantiate the fact that it was not necessary to submit the diary. The learned counsel has argued that excise duty on unmanufactured tobacco was abolished w.e.f. 1.3.1979 and consequently tobacco excise manual lost its relevance in the day-to-day functioning of the Central Excise office. There is another manual referred to by the learned counsel, "Basic Manual of Departmental Instructions on Excisable Manufactured Products." Until 12.7.1988, there was no provision in this manual for maintenance of any diary. Thus according to the learned counsel



for the applicant, there were no instructions which required maintenance of any diary. In view of this, it is argued that during the period under review from 1.1.1987 to 1.5.1987, there were no instructions requiring maintenance of any diary and as such the adverse remarks relating to non submission of diary are totally unfounded and have no basis. It is a fact that an amendment in Basic Manual of Departmental Instructions on Excisable Manufactured Goods, in July, 1988, the requirement for maintenance of XTI diary, which was hitherto contained in the Tobacco Manual, was incorporated in the Basic Manual (Annexure R1). The case of the learned counsel for the respondents is that XTI diary is being maintained by the Executive Officers including Assistant Collector, Group 'A' to give an idea to the supervisory officer to adjudge the role and performance of the officer on the point. In this connection, the learned counsel for the respondents has referred to the representation of the applicant dt.10.10.1988 (Annexure B) in which in para (b), the applicant has himself stated that XTI diary is submitted as per para-332 of Tobacco Excise Manual and the diary was continuously submitted in the observance of the same. The learned counsel for the applicant, however, argued that the

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Tobacco Excise Manual became outdated w.e.f. 1.3.1979 when manufactured tobacco was exempted from whole of basic, special and additional excise duty. In view of these submissions, the learned counsel argued that there remained no legal and administrative responsibility on the part of the Executive Officer to write and submit XTI diary. The said Tobacco Manual has never been repealed. Many of the provisions of the Manual as argued by the learned counsel for the respondents, are still in vogue and many registers etc. prescribed therein, e.g., 335 J Register are still in use. In the rejoinder, the applicant has referred to that there was another department manual which governs the procedures and the Tobacco Manual had no application to them. In fact, the letter dt.12.7.1988 issued by Central Board of Excise and Customs where it is written that the form of the extract of XTI diary prescribed in terms of para 332(a) of Tobacco Excise Manual has become redundant in parts after the removal of control on manufactured tobacco. It has, therefore, been decided to update the extract and give it to a more meaningful form. By virtue of this letter dt.12.7.1988, XTI diary is maintained as per para-215(xviii) of the Basic Excise Manual itself. This goes

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to show that at no point of time at least under period for review, the submission of XTI diary has never been stopped. It is not for the applicant to decide that the submission of XTI diary has become redundant or irrelevant.

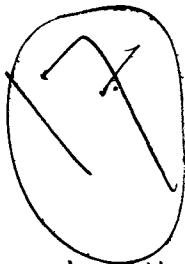
The observation made by the reporting officer in observation pointed out a fact which is not denied by the applicant in clear terms, but what is stated is that there remains no legal and administrative responsibility on the part of the Executive Officer to write and submit his XTI diary. This argument is not substantiated by any document on record. Merely because Tobacco Excise Manual became outdated w.e.f. 1.3.1979 as alleged by the applicant will not ipso-facto would amount to repeal of that manual. The respondents in their counter have stated as certain registers under the said manual are still maintained and the letter dt. 12.7.1988 provides a new proforma for the submission of XTI diary providing the same under para 215(xviii) of the Basic Excise Manual. While judging the remarks of the reporting officer, the competent authority has considered this aspect with reference to the representation made by the applicant (Annexure B) and retained this remark though there

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was a reference to out dated Tobacco Manual in the

representation also. The Tribunal cannot sit as an Appellate Authority over the judgment of the competent authority in that regard. Thus the argument of the learned counsel for the applicant is without any substance regarding expunging the remarks at 1(b).

6. Taking to the second adverse remark given to the applicant at 1(c) at Annexure A, the contention of the learned counsel for the applicant is that when the competent authority has already erased the remark appearing at 1(d), so the remark at 1(c) cannot be retained. It is argued by the learned counsel for the applicant that once the remarks of a more comprehensive nature are expunged, it should follow that the remarks which are narrower in ambit also deserve to be expunged. The remarks at 1(d) are of general nature which shows that the reporting officer has opined that the applicant, while posted as Assistant Collector, Preventive exhibited carelessness, incompetent lack of sense of proportions and arrogance and hence he never be given field charge or any other sensitive posting at least for the next 5 years. The competent authority did not find this remark justified taking into account the assessment of the applicant's work for the period under review. Sentence 1 of the remark at 1(c) also is



to the effect that the applicant went about to his work with indifference and carelessness. This remark, therefore, is the same as has been expunged in para 1(d) and there is no justification for retention of the sentence in remark 1(c) of Annexure A. This is because of two reasons. Firstly, the competent authority did not level the officer as indifferent and careless, while the reporting officer has commented in that manner further disqualifying the applicant for any sensitive posting or field posting for a period of five years. Secondly, the indifference and carelessness of the applicant during the period under review should have been projected by certain communications to the applicant in the said period. But there is nothing on record to show that he has been conveyed any displeasure of the supervisory officer for his shortcomings.

7. The next remark given to the applicant at 1(c) is that most of the cases which he made were not properly investigated into and gave the appearance of being done ^{so} for the sake of raising of the statistics. Through out the period he showed no inclination towards improving himself. Further he was unwilling to criticism and in fact he resented any supervision. I have also seen the personal file of the applicant and there is

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material on record to come to this finding. On account of one lapse on the part of the applicant, the Collector of Central Excise, Allahabad issued him a Memo dt. 8.6.1987. This was with effect to an order passed by the Hon'ble High Court, within the period under review that on 25.3.1987 whereby the seized gold ornaments worth Rs. 5,63,390/- were required to be released to M/s Khanna Jewellers from where seizure was effected. The only reply in the rejoinder is that this case was not specifically cited in the adverse remarks. But it is not so in the confidential note attached to the adverse remarks. This fact is very much mentioned. The learned counsel for the applicant also argued that this case does not relate to the period under review. But the effect of that action of the applicant, though may be of an earlier period, has taken place in March, 1987 while the remark pertains to the period from 1.1.1987 to 1.5.1987.

8. There is also a mention of another case of Banaras in the confidential roll attached to the personal file of the applicant along with the adverse remarks. But it is not necessary to give out details of the same in order to maintain secrecy, but during the course of the arguments, this fact is not denied by the applicant himself and only defence taken is that that is also of an earlier period.

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9. The applicant has also been issued Memo, though in June, 1987, i.e., after the period under review. But it cannot be said that these do not pertain to the acts of the applicant in that period also. The remarks given at 1(c) therefore, are confined exclusively on the observance of the supervisory officer on the acts and conduct of the applicant in the performance of his duties during that period or or immediately earlier to it, the effects of which have come out in the period under review and the applicant has been duly communicated by the Memo the comments informing him about his slackness in performance.

10. The reporting officer has also made certain personal observation which cannot be interfered with as it relates to the fact that the applicant was unwilling to take criticism and that he resented any supervision. Though the reporting officer has been made party to the application, but merely mentioning of the fact that the reporting officer was biased would not establish malafide or prejudicial attitude of the reporting officer against the applicant.

11. The learned counsel for the applicant could not show from the averments as well as by oral arguments that the

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reporting officer has prejudicial attitude against the applicant. The competent authority has also gone through the personal file of the applicant and in fact has taken a view in expunging some of the adverse remarks. The approach of the competent authority cannot, therefore, be said to be in any way unjustified or unfair.

12. The learned counsel for the applicant has also pointed out that his representation has been rejected by a non-speaking order. In fact, the competent authority has applied its mind in as much as the adverse remarks at 1(a) and (d) have been ordered to be expunged. This could not have been done unless there was a proper application of mind and assessment of the work of the applicant during the period under review. The matter has been fully considered and in view of the authority of the Hon'ble Supreme Court in the case of UOI Vs. E.G.Namboodari, 1991 (2) SCR p-675, it is not necessary that a speaking order be given for rejecting a representation against the adverse remarks.

13. In view of the above conspectus of facts and circumstances, the present application is partly allowed and the remark in para 1(c) in the sentence 'He went about his work with indifference and carelessness' shall be expunged and the rest of the remarks in 1(b) and 1(c) shall be retained. The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this order. Costs on parties.

J.P. Sharma,
(J.P. SHARMA) 8.1.93
MEMBER (J)