

Reserved

IN THE SUPREME COURT OF INDIA

ALL INDIA BENCH, KOLKATA

C.A. No. : 669 of 1989.

T.A. No. :

DATE OF DECISION: 21-4-98

Ashok Kumar

PLAINTIFF.

Shri G. K. Singh

ADVOCATE FOR THE
DEFENDENT.

VERSUS

Union of India & ors.

DEFENDENT.

Shri Ashok Mohiley

ADVOCATE FOR THE
DEFENDENT.

LEAVE

The Hon'ble Mr. S. Dayal, Member (A)

The Hon'ble Mr. _____

1. Whether the orders of the 1st judge, may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships want to see the fair copy of the Judgment?
4. Whether to be directed to all other Bench?

Yes

SIGNATURE

HANDS

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE DAY OF 21st ^{April} ~~MARCH~~ 1998

HON.MR.S.DAYAL, MEMBER(A)

Original Application No. 669 of 1989

Ashok Kumar, son of Shri S.N. Sharma
R/o 117/2/398 Sharda Nagar
Kanpur at present Inspector, (D.B.4.7.50),
Central Excise Division-1, Central Excise
Collectorate, Kanpur.

.. .. Applicant

(BY Adv: Shri G.K. Singh)

Versus

1. Union of India through the Ministry of
Finance, Department of Central
Excise, New Delhi.
2. Central Board of Excise and Customs
New Delhi.
3. Deputy Collector(Personnel and Establishment)
New Delhi.

.. .. Respondents

(By Adv: Shri ASHOK Mohiley.

O R D E R

HON.MR.S.DAYAL, MEMBER(A)

This is an application under section 19 of the Central
Administrative Tribunals Act 1985

2. The applicant seeks the relief of setting aside the
order dated 28.3.1988 in which his representation against
adverse remarks was only partly allowed by the Collector and
order dated 4.11.1988 by which his appeal against the order of
Collector was rejected by the Board.

3. The facts as mentioned by the applicant in his
representation are that while he was functioning as inspector
Central Excise, kanpur, certain adverse entries were made in
his A.C.R for the period from 1.1.1986 to 31.12.1986 and the
remarks were communicated to him by letter dated 23.9.1987.
The applicant filed representation against the adverse remarks
to the Collector. The Collector expunged only some of the
entries and retained other adverse remarks. The applicant
filed a representation against the order dated 28.3.1988

before the Central Board of Excise and Customs on 4.4.1988. The representation was not disposed of within the time limit in three months as laid down in the O.M. Department of Revenue regarding confidential reports. Both the orders allegedly do not indicate any reason for rejection of the representations made by the applicant.

4. Besides the grounds of non containment of the reasons in the orders of rejection and delay in considering the representations of the applicant, the orders have also been challenged on the ground that the evidence furnished by the applicant in his representations was not considered by the respondents.

5. The arguments of Shri G.K. Singh learned counsel for the applicant were heard. Shri Ashok Mohiley learned counsel for the respondents who had appeared subsequently, was allowed to file his written arguments. A copy of the written arguments was served on the learned counsel for the applicant and then filed in the office and is on record and has been considered alongwith the pleadings.

6. A perusal of the annexures relating to communication of adverse remarks and consideration of the first representation of the applicant by the Collector of Customs shows that the remarks of the Reviewing Officer in Part III Col. 2 regarding non attending" to correspondence relating to draw back" was expunged by the authority. Similarly remarks of the Reviewing Officer relating to non initiation of "proposal of reward" has been expunged as also the remarks in Part III Col.no.5 relating to his being indisciplined officer on the basis of a single instance of non wearing of uniform on 30.10.1986 and Col. 11 in Part IV that he was an indisciplined officer were expunged. The remarks relating to his reluctance to work in the field and needing goading during work searches and and being repeatedly asked to carry out while he was carrying out field duties and non collection of single piece of evidence relating to seizure , lack of initiative in preventive work specially in collection of intelligence and

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shirker and lacking initiative have been retained. The representation of the applicant shows that the applicant became reluctant to seize goods in the form of commencement of indigenous caps and justified it by saying that the goods which were seized were later returned to the parties. He claims that he earned the displeasure of his immediate superiors showing the reluctance to value to seize synthetic racks at Rs.150/- per kg. In short he alleges that the respondents were biased and, therefore they awarded adverse entries to him. The respondents have annexed the order of the Collector on the first representation of the applicant. The collector has remarked that the applicant had not collected and worked out any intelligence nor quoted any such instance which was his primary duty as an officer in the preventive bench. The Collector has made his order based on the comments of the reporting officer who had commented on the representation of the applicant that the applicant did not put a single intelligence leading to a case of seizure despite repeated directions. The reporting officer has also mentioned in his comments on the representation of the applicant that the applicant never told him about any advantage in doing work without showing enthusiasm either orally or in writing and that the applicant was never ordered to seize goods which were not liable to be confiscated or persuaded to assess seized goods at a lower value.

7. As regards non communication of the adverse remarks within the prescribed time limit, the orders relating to the time limit were issued by the department of Personnel and Training on 11.9.1987 and were communicated by the Department of Revenue to various officers on 28.9.1987. The claim of the applicant that the adverse remarks become a nullity after expiry of the period laid down in the govt instruction is not supported by the instructions of the Department of Personnel and Training. These instructions are by way of guidelines and stipulate that the time limit indicated therein may be adhered

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to as far as possible. Exceeding the prescribed time limit in the confidential report does not invalidate the remarks or orders passed on the representation made against adverse remarks.

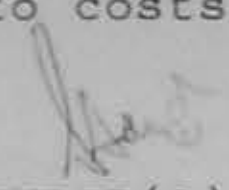
8. As regards the bias on the part of the Reporting and Reviewing Officers and the officers deciding the representation of the applicant, it is merely an allegation by the applicant which has been refuted by the respondents. It is easy to make such allegations against the authorities charged with the duty of evaluating the performance of a subordinate cannot be accepted without any strong evidence which may establish bias on the part of the respondents. No such evidence exists in this case.

9. The applicant has alleged that reasons for rejection of adverse remarks were not contained in the orders. Evaluating the performance of each officer is the duty cast upon the superior authority and the nature of the evaluation is confidential. The adverse remarks are communicated to an official because the career of an official is likely to be adversely effected. In order to prevent unfair remarks, the procedure for considering representation is laid down. The comments of the reporting and reviewing officers are obtained and an authority superior to them considers the representation and the remarks of the reporting and reviewing officer on the representation and then takes a view. This procedure has been followed in the present case and representation of the applicant was considered objectively and some adverse remarks were expunged. It is not necessary that the order communicating the result of such consideration to the applicant should be a detailed one.

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10. There is thus no merit in the application and the application is dismissed.

11. There shall be no order as to costs.


MEMBER (A)

Dated: ^{April}~~March~~ 21st, 1998

Uv/