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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.645 OF 1993

Cuttack, this the 5th day of December, 1996

Banamali Mohapatra

....

Applicant

Vrs.

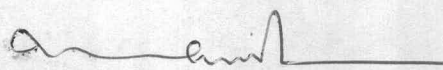
Union of India & others

....

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*


(N.SAHU)
MEMBER (ADMINISTRATIVE) *5/12/96*

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CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

Shri Banamali Mohapatra,
aged about 47 years,
son of late Harekrushna Mohapatra,
Ex-Pay & Accounts Officer in the
Collectorate of Central Excise & Customs,
Bhubaneswar, now at 1082, Nayapalli, P.O.-Bhubaneswar,
District-Khurda, Pin-751 012 ... Applicant

-versus-

1. Union of India, represented through
Controller General of Accounts,
Ministry of Finance,
Department of Expenditure,
Lok Nayak Bhavan,
Khan Market,
New Delhi-110 003
2. Principal Chief Controller of Accounts,
Central Board of Excise & Customs,
AGCR Building (1st Floor),
New Delhi-110 002.
3. Deputy Controller of Accounts (Admn.),
Office of the Principal Chief Controller
of Accounts, Central Board of Excise and
Customs, AGCR Building (1st Floor),
New Delhi-110 002
4. Collector, Central Excise & Customs,
Rajaswa Bihar,
Bhubaneswar-751 004. Respondents

Advocates for applicant - M/s Antaryami Rath &
A.C.Rath.

Advocate for Respondents - Mr.Akhaya Ku.Misra,
Addl.Central Govt.

Standing Counsel .

ORDER

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AHU, MEMBER (ADMINISTRATIVE)

In this application the applicant challenges the adverse remarks in the ACR for 1991-92. He prays that those remarks be quashed. Learned counsel for the applicant, Sri Antaryami Rath has impugned the remarks in the ACR for 1991-92 on the grounds that: (1) they do not represent an objective and fair assessment and are malice-ridden when compared to the previous reports; (2) some of the impugned remarks are inconsistent with the remarks made in other columns; (3) the applicant is aggrieved against the remark under item 2, Part III (C) to the effect that the applicant made wrong decision at times like issuing suspension order when he was not empowered and when it was not fully warranted; (4) he states that there was an improper appreciation of advice rendered by Sri T.K.Das, Principal Chief Controller of Accounts to the Collector in letter dated 8.11.1991; and (5) mala fide intention has been attributed to the Respondents.

2. The entire confidential report was communicated to the applicant by Annexure-A/3 against which he made a very detailed representation. The rejection of the representation was communicated to him. By his letter dated 3.3.1993 the applicant sought for a speaking order, but this request was not acceded to. The learned counsel, Sri Antaryami Rath has argued before me that it was the duty of the Respondents to consider the representation and in token thereof, they should communicate a reasoned order. On the general question of disposing of a representation, Sri Rath has mentioned certain authorities, namely, (1991) 16 ATC 177, (1991) 15 ATC 586 and 1978(1) SLR 829. It is not necessary either to recount

those authorities or to make a detailed analysis. This matter has been considered by the Hon'ble Supreme Court in the case of Union of India v. E.G.Nambodari 1991 (2) SCR 675. The Supreme Court held that it is not necessary that a speaking order be given for rejecting a representation against the adverse remarks.

3. In the counter affidavit it has been pointed out that during the calender year 1987 two confidential reports were written in respect of the applicant for the periods from 1.1.1987 to 28.8.1987 and from 29.8.1987 to 31.12.1987 and even though some of the adverse remarks were expunged, yet certain important adverse remarks were allowed to stand. It should be made very clear that an adverse remark is related to the performance of an official during a particular period. An objective assessment of the performance of that period alone should be considered and be the basis for making any remarks whatsoever. As a matter of practice, the confidential reports are not written after going through the earlier appraisals of an official. Thus the adverse remarks for earlier years would not come in the way of any judgment to be made for the year under review.

4. The applicant was promoted as Pay & Accounts Officer on ad hoc basis with effect from 12.2.1985 and was posted to Pay & Accounts Office, Central Excise & Customs, Bhubaneswar. This Pay & Accounts Organisation in Central Board of Excise & Customs is controlled centrally from Delhi by the Principal Chief Controller of Accounts. During the relevant period the applicant performed the functions of Pay & Accounts Officer. He, no doubt, faced certain problems in the office which resulted in slowing down or occasional

stoppage of work. He attributed the mal-functioning of the office to one Sri S.Biswas, a Key Punch Operator. During this period the computer system failed. The office work relating to compilation of revenue accounts fell into arrears. The case of the Respondents is that the applicant was supremely mal-adroit. He could neither apply a persuasive style of management nor he was able to use his disciplinary powers to get work from the staff. The compilation of Central Excise Revenue Receipts Accounts were kept pending since September, 1989. The whole grievance of the Respondents is that the applicant did not show any leadership in attempting manually to compile the accounts and bring them up-to-date. He should have persuaded his subordinates to do the work manually. The Key Punch Operator does the same work by the computer which he could have done manually. Under FR 11 a Government servant may be employed in any manner required by the proper authority. During the reporting period, Rs.73 Crores of Excise & Customs Revenue were not compiled properly. As early as June 1990 the applicant had been given instruction to get the work done manually, i.e. much before the reporting period. A letter was issued by the Principal Chief Controller of Accounts, CBEC, to the applicant in this regard.

5. The Reviewing Officer also personally inspected the office of the applicant before making the remarks. Every senior officer knows that the computer system had been ushered in this country without a proper framework and trained staff. In fact, the computer culture had come to stay only very recently. Before the computers, accounting work was actually being done in every office and not, merely in the office of the Controller of Accounts, manually. I have carefully considered the submissions of the rival counsel

and I find that the applicant failed to get the work done manually by the staff. I think the applicant had unnecessarily allowed the situation to go out of hand. He is the supervising officer and he has every power to issue a duty card and enforce the duties as per the mandate of the duty card. Even if the computer had failed, the applicant could have persuaded the Key Punch Operator to complete the work manually. His failure in this regard seems to be obvious. As a result, as mentioned in paragraph 19 of the counter, the arrears of the current months in Revenue compilation have increased from Rs.84 Crores to Rs.157 Crores. This situation had arisen in spite of the fact that there was no paucity of staff. There was an ad hoc Junior Accounts Officer who was substituted by a qualified Junior Accounts Officer since 1991. Two Data Entry Operators were working throughout the reporting period 1991-92. I entirely agree that the indiscipline of the Data Entry Operator should have been tackled by the applicant.

6. It is mentioned in the counter affidavit that the suspense (Receipt Awaiting Transfer) was cleared by the applicant only after the Principal Chief Controller of Accounts visited Bhubaneswar and pointed out his failures. It was only after inspection of this authority that he commented in the CR as reviewing officer that the applicant lacked in supervision skills. These remarks relating to the applicant's inability to accomplish the work through manual application cannot be faulted.

7. I, however, find that the following remarks in the CR do not seem to be justified:

(page 9, para 2)

"Decision-making ability: Please comment on the quality of decision-making and the capacity to take decision at his/her level on matters within delegated areas: Makes wrong decisions at times, e.g. Issue of suspension orders when he was not empowered and when it was not fully warranted."

(Page 5, para 3)

"Knowledge of Sphere of work: Please comment specifically on each of these: Level of knowledge of functions, rules and regulations, related instructions and their application in the field of work assigned

14 to the official;

Adequate knowledge of functions, rules & regulations. He lacks lacks knowledge in disciplinary matters. He could not apply the knowledge in solving the day to day problems."

The grievance in the counter affidavit is that the Collector and the Additional Collector are responsible for provision of budget and day to day administration of Pay & Accounts Unit. Disciplinary jurisdiction and cadre control over the Pay & Accounts Unit, where the applicant was working, lie with the office of the Principal Chief Controller of Accounts. The applicant should have initiated proper steps for disciplinary action through the reporting/reviewing officers who are vested with such disciplinary powers. But the fact remains that Sri M.Sridharan, the Deputy Controller of Accounts (Admn.) issued the suspension order on 14.1.1992 of Sri S.Biswas basing on the preliminary reports submitted by the applicant. Later on when the Principal Chief Controller of Accounts, CBEC visited the office, he observed that the applicant was also blame-worthy. According to him, it was not a matter of pure discipline but a matter of strained relation between the applicant and his subordinates. He accordingly directed revocation of the suspension order by his instruction dated 14.2.1992. In this regard, the applicant had invited attention to the letter of Sri T.K.Das dated 8.11.1991 wherein it was mentioned that whenever the computer is out of order for more than 15 days, the Excise Revenue Receipt accounts should be compiled manually with the help of the K.P.O and other Accountants invariably. Shri S.Biswas, Data Entry Operator had not been regular in attendance and he was not behaving properly with the other officers. The applicant brought this to the notice of the Additional Collector (P&V). A report was sent to the Principal Chief Controller of Accounts by the Additional Collector in Vigilance File. The applicant's claim is that the suspension order in question was signed and issued by him after he obtained the approval of the Additional Collector, Head of the Local

Office and the Collector. He immediately informed about the same to his superiors. The facts remains that the Deputy Controller of Accounts himself endorsed the suspension on 14.1.1992. I do not see anything wrong in the conduct of the applicant in this regard. The particular Data Entry Operator was not having good relationship with the other members of the staff. He was not amenable to discipline. He never attended to work properly. The applicant wanted to discipline him and he consulted the Collector and the Additional Collector who are senior officers. He also informed the Deputy Controller of Accounts. Ultimately he issued the suspension order after obtaining the endorsement of the Deputy Controller himself. The Respondents have never said that the Key Punch Operator was blameless. That he created several hurdles for the applicant appears very clear from the averments. If someone is not amenable to discipline, there is nothing wrong in issuing him a suspension order. I will not comment on the role of the Respondent No.2 in making a personal inspection and satisfying himself that the matter was not one of discipline but of strained relationship. That he sorted out the problem is what is expected of him as a senior officer. But evenso there is nothing improper for the applicant in issuing a suspension order. A suspension order can be issued for gross indiscipline. Simply because he consulted the local senior officers in addition to his superiors did not make his decision inappropriate. The adverse remarks extracted above at paragraph 7 that he lacked knowledge in disciplinary matters and made wrong decisions cannot be sustained and I direct that those remarks shall stand expunged.

8. That apart, I find all other adverse remarks are in order. The applicant as the Pay & Accounts Officer was wholly responsible for two major functions of the Pay & Accounts Office, namely, payment and accounting. He has to do the task of revenue

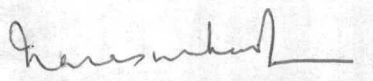
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accounts compilation and classification, and not attending to such a major item of work for three years when the applicant was working as a Pay & Accounts Officer, was commented upon in his annual confidential reports. If as early as 8.7.1991 Sri T.K.Das, the Chief Controller of Accounts had mentioned that an amount of Rs.212 & odd Crores was in suspense, this amount had to be cleared from the suspense head to the final head. Even at that time he was advised that the work should be done manually by utilising the computer men instead of waiting for a long time. I agree that the applicant justly deserved the remarks for not showing awareness and consciousness of urgency in the work and as an officer in charge he did not show sufficient and consistent drive in clearing this backlog of work.

9. With regard to inconsistency between certain positive remarks of the applicant and the adverse remarks, I think this cannot be considered as an inconsistency. The applicant may have initiative, but he was found wanting in application. The applicant may be good in the knowledge of rules and procedures, but he might be totally ineffective in giving proper leadership. The applicant should know that he is judged by whether he achieved the objective goals, qualitatively and quantitatively set for him. It is the ultimate result of achieving the goals in a year's performance that would matter. If an official had achieved the goals set for him, any minor shortfall or deficiency in the routine spheres of work may be overlooked. Usually the assessment of an official is based on overall achievements. If his achievements are outstanding and surpass the goals, then by and large he acquits himself creditably. Normally the superior officers ignore minor lacunae unless the applicant is faulted on matters of gross indiscipline or dereliction of duties or misconduct. It is because the applicant did not achieve the major goal that his performance was faulted.

In spite of computer's failure, I certainly agree that the applicant exposed himself to the charge that he neglected the work of compilation and classification of accounts. No apology or excuse can be heard on this count, but on the same analogy the erring officials, who assisted him but did not co-operate with him, should have been punished. There is no point in saying that the Data Entry Operator did not put in his best and yet there was no justification in finding fault with the suspension order issued against him. It is for the superior officer to advise and correct, and stand by the subordinate Pay & Accounts Officer in chastising the Key Punch Operator who admittedly was indisciplined and defiant. Thus except the two remarks referred to above, which I direct shall stand expunged, all other adverse remarks do not call for any interference.

The Original Application is partly allowed.


(N.SAHU)
MEMBER (ADMINISTRATIVE)

Nayak, P.S.