

In the Central Administrative Tribunal, Jodhpur Bench,  
Jodhpur

Date of order : 20 . 10 . 2000

O.A.No. 324/97

Karni Singh S/o Shri Harnarain Singh Solanki, Lower  
Division Clerk in the office of Assistant Commissioner  
of Incometax, Rani Bazar, Bikaner R/o Near B.Sethia  
Building, K.E.M.Road, Bikaner (Rajasthan).

... Applicant.

vs.

1. Union of India through Secretary, Ministry of  
Finance, Government of India, South Block, New Delhi.
2. The Commissioner of Incoe-tax, Raika Bagh Palace,  
Jodhpur.
3. The Deputy Commissioner of Income-tax, Bikaner  
Range, Rani Bazar, Bikaner.
4. The Income-tax Officer, Ward No.1, Rani Bazar,  
Bikaner.

... Respo ndents.

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CORAM :

HON'BLE MR .A.K.MISRA, JUDICIAL MEMBER

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Mr.Bharat Singh, Counsel for the applicant.  
None present for the respondents.

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ORDER

BY THE COURT :

The applicant had ~~filed this~~ O.A. with the prayer  
that the respondents be directed to quash order dated  
4.7.96, Annex.A/1 and order dated 24.2.97, Annex.A/2

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and the adverse remarks in confidential report of the applicant, be directed to be expunged from confidential service record of the applicant so that the applicant is not debarred from promotion on the basis of seniority, selection and suitability.

2. Notice of the O.A. was given to the respondents who have filed their reply to which a rejoinder was also filed by the applicant.

3. Vide Annex.A/1 dated 4.7.96, the applicant was communicated with the following adverse remarks :-

"In the ACR for the period 1.4.95 to 8.11.95, the Reviewing Officer has given the following adverse remarks :-



22. Does the Reviewing Officer agree with remarks of the Reporting Officer? If not reasons for disagreeing and the extent of disagreement may be mentioned in brief. No, I do not agree with the remarks of the officer. My comments are contained in the report written by Sh.T.R. Chawla. It is worth mentioning that Sh.D.C.Sharma himself had surrendered the official vide his letter dated 14.12.95 as Sh.Karni Singh was not found to be good at work.

In the ACR for the period 9.11.95 to 31.3.96, the Reporting Officer has given the following adverse remarks :-

13. Maintenance of the files and placing papers, acknowledgements and all challans on files. Inadequate

14. Promptness in disposal Inadequate

16. Promptness in receipt, distribution and despatch of papers/Dak. Inadequate

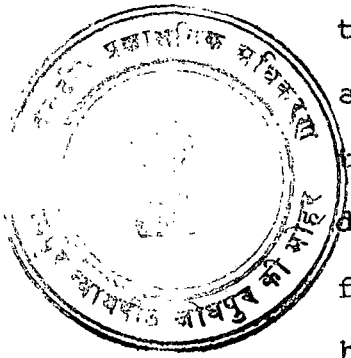
On the above remarks, the Reviewing Officer has given the following remarks :-

22. Does the Reviewing Officer agree with remarks of the Reporting Officer? If not the reasons for disagree- The Official is careless in his work and lacks sincerity. He absents himself

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-ment may be mentioned in brief. from the duties without prior sanction/permission."

4. Applicant's representation against the afore-mentioned adverse remarks, was rejected vide Annex.A/2 dated 24.2.97. The applicant has challenged both these orders on the ground that the applicant did not receive any adverse remarks during the last 24 years of his service, the adverse remarks were given by the authority who had no occasion to observe the working of the applicant for more than 33 days out of the total period of five months around, that in <sup>the</sup> ~~the~~ case the reporting officer did not give any adverse remark but the reviewing officer had given the remark, before giving the adverse remarks the applicant was never informed to improve his working and was never served with any show cause notice etc., the representation of the applicant was rejected without disclosing any reason whatsoever and the remarks are factually incorrect because the applicant is a sincere hard-working Government servant.



5. The respondents have stated in their reply that the adverse remarks were given by an officer who had an opportunity to watch the working of the applicant. Before giving an adverse remark, it is not necessary that for inefficient working, a Government servant be asked to show cause. The reviewing officer has a right to give his own opinion dis-agreeing with the reporting officer. The officer who had watched the working of the applicant had given adverse remarks which relate to the factual aspect of his working and no judicial interference is needed in such cases. Before giving any adverse remark

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no warning is required to be given to the applicant. It is not necessary that if a candidate had not earned adverse remark in the previous years, his working in the subsequent years is also efficient and good. The present OA is devoid of any merit and deserves to be dismissed.

6. In the rejoinder, the applicant has reiterated the facts already pleaded in the O.A. Nothing new has been said in the rejoinder.

7. Both the learned counsel for the parties gave written arguments which were placed on record.

8. I have considered the written arguments submitted by the learned counsel for the parties and have gone through the pleadings.

9. The applicant was appointed as Lower Division Clerk on 7.7.73. The adverse remarks which he has challenged in this OA relate to the year 1995-96. In my opinion, it is not necessary that if in the past years, the applicant had not earned any adverse remark, he would not be earning any adverse remark in the subsequent years. A candidate earns good or bad remarks on the basis of his working during a particular year and not on the basis of his previous working. In fact, the reporting officer is not expected to know the remarks contained in the confidential reports of the previous years. Each year, the reporting officer has to make a fresh assessment in respect of working of a government servant. Therefore, no weight can be attached to the



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fact that the applicant had not earned any bad remarks in the previous years, while disposing of the matter in controversy relating to the adverse remarks for the years 1995-1996.

10. The process of reviewing the remarks of the reporting officer was introduced with an object that the reviewing officer should also have an opportunity to express his views relating to the working of a government servant, It is not necessary that every time the reviewing officer should agree with the remarks of the reporting officer. Therefore, if in the instant case for the period starting from 1.4.95 to 8.11.95, the reporting officer had not given any adverse remark in respect of the working of the applicant it does not mean that the reviewing officer cannot give his view. In the Government organisations, the reviewing officer is generally a senior officer who is having supervisory control on the Government employee through a subordinate officer. Therefore, it is not necessary for him to closely watch the working of such government employee. He may come across the working of such government employee through files, notings and other things which are seen by him. In view of this, disagreeing with the reporting officer if reviewing officer has given adverse comments in respect of the applicant's working they cannot be treated as based on extraneous considerations.

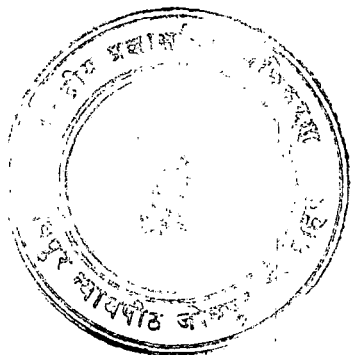
11. So far as the working of the applicant between 9.11.95 to 31.3.96 <sup>is concerned</sup> the reporting officer has given adverse remarks to the applicant by mentioning the



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word 'inadequate'. The word inadequate may not fit in that language of the questionnaire yet the intention of the reporting officer was to show that applicant was not properly working on the post and the job assigned to him. With reference to the remarks of the reporting officer, the remarks of the reviewing officer are in tune and I do not find any fault in such remarks. There is nothing on record to show that applicant remained ill for 33 days so as to deprive the reporting officer of an opportunity of observing the working of the applicant for 33 days. If a Government servant remains on leave for pretty long time yet the confidential report has to be for the entire period and the period of illness or otherwise absence from office is not excluded while assessing the working of a Government servant. In view of this no importance can be given to the fact that out of the period starting from 9.11.95 to 31.3.96, the applicant had <sup>remained</sup> ~~remained~~ on medical leave for 33 days.



12. ~~Adverse remarks given in the confidential report cannot also be treated as bad in law because~~ The working of a Government servant is a thing which could be observed by his superiors every day and continuously through-out the year. A Government servant is expected to work sincerely and faithfully and he is not required to be <sup>every now and then.</sup> warned for improving his working. Need less to say that applicant had been a Lower Division Clerk for almost 23 years prior to the adverse remark in question and when he was found lacking in respect of maintenance of files, promptness in disposal and promptness in receipt, dispatch and distribution of papers and dak, he can safely be said to be liable to receive such adverse

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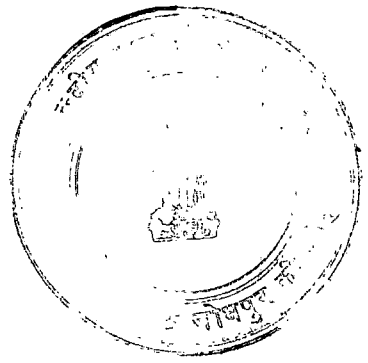
remarks. No fault can be found in respect of these remarks by the reporting officer or the reviewing officer. If the applicant had started his carrier as a Clerk, a couple of years earlier then ofcourse, a warning to improve his working could be thought necessary but for a Clerk of applicant's standing does not need any such caution in respect of his working.

13. In my opinion, there is nothing on record which may persuade me to come to a conclusion that the adverse remarks are not factually correct. I may repeat here that the officers, who had an opportunity of closely watching the working of the applicant while in the capacity of an immediate officer and the reviewing officer, were in a better position to assess the capability of the applicant and if while assessing the capability of the applicant they have come to a conclusion which is revealed in the Annual Confidential Reports then the same cannot be said to be baseless. In such circumstances, judicial review is neither necessary nor possible. It is alleged that while disposing of the representation of the applicant regarding adverse remarks, no reasons were communicated to the applicant vide Annex.A/2. But, in my opinion, in such matters no reasons are required to be given. Adverse remarks in the Annual Confidential Reports are the result of day to day observation of the working of a government servant, therefore, reasons to support such adverse remarks would in fact be endless and bulky. In such matters, no memorandum of day to day working of a government servant is kept by



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the reporting officer neither it is possible. Therefore, even if some reasons are communicated to the applicant in reply to his representation then probably he will demand the copies of memorandums or would question the memory of the reporting officer and the controversy would be endless. Therefore, no reasons are required to be communicated in such matters. The arguments of the learned advocate in this regard are devoid of any force. The O.A. in my opinion, is devoid of any merit.

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14. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.

*A.K. Misra*  
20/10/2000  
( A.K. MISRA )  
Adm. Member.

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Received Copy  
May 25/11

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Part II and III destroyed  
in my presence on 11-22-07  
under the supervision of  
section officer (J) as per  
order dated 10/11/07

Mark  
Section officer (Record)