

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

C O R A M:

O.A No.109/2002 And O.A No.497/2002

Friday this the 26th day of September, 2003

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

R.Nandanan Thampi,
Senior Technical Assistant,
Telecommunications Wing,
Office of the Commissioner of Central
Excise and Customs,
Central Revenue Buildings,
I.S.Press Road,
Cochin-682018.

....Applicant in both OAs

(By Advocate Mr.C.S.G Nair (counsel in both OAs)

V.

1. Union of India, represented by
the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110 001.
2. Member (Personnel)
Central Board of Excise & Customs,
North Block
New Delhi.1.
3. The Commissioner of Central Excise &
Customs, Central Revenue Buildings,
I.S.Press Road,
Cochin-682018.
4. The Additional Commissioner of Central
Excise and Customs (Pv)
Office of the Commissioner of Central
Excise and Customs,
Central Revenue Buildings
I.S.Press Road,.
Cochin-682018.
5. V.V.Ramdoss
Assistant Director,
Telecommunication Wing,
Office of the Commissioner of Central
Excise and Customs,
Central Revenue Buildings
I.S.Press Road,
Cochin-682018.

....Respondents in both O.As

(By Advocate Mr.C.Rajendran, SCGSC (R 1 to 4 in OA 109/2002)
Advocate Mr.C.B.Sreekumar, ACGSC for R 1 to 4 in OA 497/2002
Mr.C.B.Sreekumar for R.5 in OA 497/2002.

Both these applications having been heard jointly on 22.9.2003,
the Tribunal on 26.10.2003 delivered the following:

O R D E R

HON'BLE SHRI K.V. SACHIDANANDAN, ADMINISTRATIVE MEMBER

Applicants and respondents in both these O.As are one and the same and the facts of the cases are common and both the parties agreed that these O.As can be disposed of by a common orders.

2. In O.A No.109/02 the prayer of the applicant is to quash the adverse remarks entered in the ACR of the year 1998-99 whereas in O.A No.497/02 the prayer is for quashing the adverse remarks entered in the ACR of the year 1999-2000. The grounds and facts of the case of both the O.As are one and the same therefore by a common order these O.As are disposed of.

3. The applicant while working as Radio Technician at Customs & Central Excise Department at Mumbai had been transferred to Cochin and finally promoted as Superintendent (Maintenance) a Group-B post on ad hoc basis. He was reverted as Sr.Technical Assistant on account of regular selection and posting. One Shri V.V.Ramdoss, 5th respondent, who joined as Assistant Director, Telecommunication Wing, under direct recruitment quota reserved for Scheduled Caste/Tribe had acted as Reporting Officer for writing ACR of the applicant for the years 1998-99 and 1999-2000 and made the ACRs adverse vide the impugned orders. The applicant represented vide his appeal to the President, the second respondent, the authority did not dispose of the said appeal, therefore, the applicant filed O.A No.166/01 before this Tribunal and this Tribunal directed the 2nd respondent to dispose of the appeal within a period of 4

months. The appeal was disposed of and the adverse entries made in column 7 has been expunged. It is contended that Annx.A5 in O.A No.109/02 was silent about other claims. The applicant has passed all the tests and consequent of which he was promoted to the selection post. It is contended that during the last 25 years he has got unblemished record and good ACRs above bench mark. It is also contended that the 5th respondent is not well versed in the work and functioning of the department and in order to hide his ignorance, he blames his subordinates. It is further averred that the technical knowledge of the 5th respondent is poor and he is not competent to hold the present post. It is stated that the remarks made in the column are without any concrete evidence or instance and the 5th respondent never brought any defects to the notice of the applicant during the relevant period. The allegation regarding quality of work the applicant states that such allegations are absolutely false. It is alleged that the 5th respondent is ignorant of the technical subject as well as English language. The Reviewing Officer, the 4th respondent has agreed the remark of the 5th respondents because he is only an administrative official and not an expert in technical matters. The applicant averred that the instructions in writing ACRs has not been followed by the reviewing authority. It is pleaded that the 5th respondent's qualification and caste was challenged in a PIL O.P before the Hon'ble High Court. Aggrieved by the adverse entries entered by 5th and 4th respondents respectively, the applicant has filed this O.A seeking the reliefs.

4.. The respondents filed a detailed reply statement contending that the forms used for writing the ACRs were supplied by the Ministry. Regarding technical knowledge of the

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applicant, it was judged during the repair work of JSB 161, ECIL HF set and Voltage Stabilizers. The Voltage Stabilizers repaired by the applicant are still lying unserviceable. With regard to repeater modification taken by the R&D work which was refused by the applicant and he was given task in writing. He could not correct or guide the mistake of his subordinates and he could not explain the circuit. The applicant never visited the workshop during experiments were carried out by the Assistant Director and the applicant has no knowledge of charging of old technology batteries. Regarding other allegations for the caste certificate and qualification certificate, the matter is pending before the Session's Court, Ernakulam which has nothing to do with the writing of ACRs of the applicant. It is submitted that the O.A is devoid of any merit which is liable to be dismissed.

5.. The applicant filed rejoinder contending that it is for the department to see that proper ACR forms to all cadres according to their charter of duties and nature of work are supplied in time. The nonsupply of forms is a lame excuse and such a serious lapse on the part of the respondent should not have come in the way of the career of the applicant who had an unblemished service of 25 years during which period he earned three selection post promotions. The explanation of the applicant regarding adverse entry that 'repair of JSB 5321 not repaired', there is no set named JSB 5321 in use anywhere and the reporting officer did not know the names of any sets used in his office. As per the charter of duties, he never engaged himself in any repair works. The reporting officer never had an occasion to assess the technical knowledge of the applicant during the entire reporting period. There has been no research and development work and no such task has been given to the

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applicant. Even the reviewing authority, the 4th respondent does not have any idea about the facts and did not go through the explanation of the applicant.

6. I have heard Mr.C.S.G.Nair, the learned counsel for the applicant in both cases and Mr.C.Rajendran, SCGSC, the learned counsel for respondents in O.A No.109/02 and Mr.C.B.Sreekumar, the learned counsel for respondents in O.A No.497/02. The 5th respondent did not file any separate counter.

7. I have given due consideration to the pleadings, material and evidence on record. The learned counsel for the applicant vehemently argued that the adverse entries have been communicated to him belatedly and therefore, the remarks are to be treated as invalid. Again, the Reviewing Officer has not discharged his duties in a responsible manner, therefore, it will not stand for hold good. It is submitted that the applicant has unblemished record of ACR upto the year 1997-98 and for 2000-01 onwards and the adverse remarks written by 5th respondent in the ACR for the year 2000-01 was expunged by the President, as per direction of this Tribunal. Before making such adverse entries, no notice or information was furnished to the applicant to rectify his shortcomings, if any. The adverse entries are made behind the back of the applicant, therefore, it is urged that the O.A may be allowed. The learned counsel for the respondents on the other hand submitted that it is the prerogative of the superior officer/reporting officer to write the ACR. The fact that the applicant had unblemished ACR record

prior and after this period is no reason to set aside these remarks.

8. I have given due consideration to the arguments advanced by the learned counsel for the parties and meticulously gone through the record.

9. It is an admitted fact that the relation with the applicant and respondent No.5 was in the longer ends and they were not in same wave length at the working place. Many personal allegations have been levelled against 5th respondent in the O.A such as casting a shadow on his cast certificate by which the said officer has obtained the job, lack of knowledge on his part on technical work, poor knowledge in English language, fakeness of his Engineering certificate, etc. On the very out set this court want to make it clear that though these unhealthy situation between a reporting officer and that of his subordinate culminated because of the egoistic tendencies of the employees or complex developed by them indeed not a healthy situation in the office atmosphere. This court is also not sitting on a disciplinary matter and not evaluating evidence on record to that effect to find out who is faulted and who is not. But the fact remains that this unhealthy relationship definitely had effect on writing these ACRs which resulted granting adverse entries to the applicant. Therefore, as far as these O.As are concerned, this court is evaluating the correctness of the procedure adopted with reference to the office orders and regulation thereof to find out whether in making such remark is with prejudice, bias or with ulterior motive and whether it is justified as per the procedure laid down by the rules. On the

very out set, it is a fact that the last date of submission of the ACR by the Reporting Officer is 7th May and as per Annx.A7 dated 19.2.99, it is made clear that it should be communicated within one month. This is an instruction issued by the Cochin Commissionerate of Central Excise & Customs which prescribes that ACRs in respect of all the officers who were on the rolls of the formation as on 28.2.99 and who have worked in the formation for a minimum period of three months during the year 98-99 have to be initiated from the formation and requested to forward sufficient ACR forms and the instructions to the reporting officer within one week and to monitor and ensure the timely submission of ACRs. The time schedule prescribed for various stages in the matter of writing of CRs is given in the enclosed statement and it should be strictly complied with. As per the schedule the last date for preparation of confidential report is 7th May of every year has been shown as the due date and adverse entries should have been communicated within one month. In this case, it should have been communicated 6.6.99 and 6.6.2000 and these were communicated on 15.10.99 and 9.8.2000, therefore, there is some delay in communicating the adverse entries to the applicant. The Hon'ble Supreme Court in State of Haryana Vs. Prem Prakash Gupta, reported in 1991(1) RSJ 742 has held that delayed communication of ACR cannot be taken into consideration. This has also reiterated in a decision in the State of Haryana Vs. P.C Wadhawa, reported 1987(2) SLR 392 SC. It is made clear that the communication of adverse remarks is really meant to improve the performance of the employee, therefore any delay in communicating the ACR to the applicant has prejudicially affected his interest and therefore it is not good taste of law, procedure and practice.

10. Coming to the merit aspect of these cases, it could be seen that as per the direction of this Court, the respondents has produced the ACR file of the applicant. On a close scrutiny of the same, it is found that, the applicant was having good/very good/excellent ACRs upto 1997-98 and 2000-01 onwards. It is also a fact that he has passed all the departmental written test as well as practical and got 3 promotions out of which two were selection post and these ACRs were written by various Asstt. Directors, well experienced and qualified on the subject. On going through the adverse remarks made by the 5th respondent in the ACRs, it appears that such remark have no relevance whatsoever with the columns these were filled with. The writing of ACRs is an important job of the reporting officer which should be done with utmost care and caution because the career of an employee will affect adversely if it is not properly filled.

11. The contention of the applicant that there is no set anywhere in the world in the name of JSB 5321 has to be taken into account to evaluate the correctness of the remark made by the reporting officer, the 5th respondent. So many such infirmities and half hearted wordings have been found in the ACR of the applicant during the periods in question and the fact that the reviewing officer had not accepted the observation of the reporting officer in full is also a fact of non-concurrence. The learned counsel for the applicant brought to my notice the decisions reported by the Apex Court in 1999(7) SCC 329, P.K. Shastri Vs. State of M.P. & Ors and 1996 SCC(L&S) 1141 Sukhdeo Vs. Commissioner Amravati Division Amravati & Anr. In these decisions, the Apex Court had made it clear that ACR should not

be made behind the back of the official. The applicant should have been given opportunity to rectify his shortcomings. On going through the ACR remarks, I find that no relevant aspect has been re-recorded and many irrelevant aspect has been incorporated. This in my view is a clear case of a prejudicial mind of the reporting officer which has got a chance of adversely affect the career of the applicant for a long time. The fact that such adverse entry made by the same officer for the years 1998-99 and 1999-2000 has been expunged by the President in pursuance of an order issued by this Court in O.A 255/03 will support this fact. Apart from that I could also see that the Report of ACR for the years 2000-01, 2001-02 of the applicant is within the bench mark which also show that the 5th respondent had written these impugned ACRs without due application of mind. It would also be seen that the 4th respondent is the reviewing authority who according to the applicant has no technical qualification and knowledge has simply adopted the remark of the 5th respondent, had also not applied his mind properly. Chapter 52 para 17 of the Swamy's Manual on Establishment and Administration, clearly shows the duties and responsibilities of the reviewing officer in reviewing the remarks of the reporting officer which on a close scrutiny has not been done in this case and on the other hand simply adopted the remark of the 5th respondent without application of mind. Respondents Nos.4 & 5 had totally ignored the fact that CR is the main steps for consideration of confirmation and promotion etc. of an official and as such its writing and maintenance is of utmost importance in the interest of employee and that the service. This concept and consideration is lacking in these impugned remarks. Therefore,

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this court is of the view that the adverse remark communicated through the impugned orders Annx.A1, Annx.A3 and Annx.A5 in O.A 109/02 and Annx.A1, Annx.A2 and Annx.A5 in O.A 497/02 cannot be sustained and to be set aside. In the conspectus of the facts and circumstances, I set aside and quash the impugned remarks, as mentioned above and direct the respondents to give all consequential benefits to the applicant flowing out of this order. There will be no order as to costs.

Dated the 26th day of September, 2003

Sd/-

K.V.SACHIDANANDAN
JUDICIAL MEMBER