

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~
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198

T.A. No. 376/87

DATE OF DECISION 8.3.1988~~Shri Madhukar B. Kulkarni.~~ Petitioner~~Applicant in Person.~~ Advocate for the Petitioner(s)

Versus

~~Union of India, through the~~ The Collector, Respondent
~~Customs & Central Excise, Pune.~~~~Mr. J.D. Desai for Mr. M.I. Sethna.~~ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G. RAJADHYAKSHA, MEMBER(A)

The Hon'ble Mr. M.B. MUJUMDAR, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

TR.APPLICATION NO.376/87

Shri Madhukar Balkrishna Kulkarni,
Plot No.84/268, Uchagaon Ext. Area,
Tal. Karvir,
Dist. Kolhapur.

.. Applicant.

V/s.

Union of India, through
The Collector of Customs &
Central Excise, Collectorate Pune,
P.M.C.C. Building, Tilak Road,
Hirabaug,
PUNE-2.

.. Respondent.

Coram: Hon'ble Member(A) J.G. Rajadhyaksha.
Hon'ble Member(J) M.B. Mujumdar.

Appearance :

Applicant in
person.

Mr. J.D. Desai,
(for Mr.M.I. Sethna)
Advocate for the
Respondents.

ORAL JUDGMENT

DATE : 8.3.1988

(PER : M.B. Mujumdar, Member(J))

Regular Civil Suit No.730/80 filed by the applicant in the
Court of Civil Judge, Senior Division at Solapur is transferred to this
Tribunal under Section 29 of the Administrative Tribunals Act 1985.

2. The essential facts for the judgment are these : The applicant
was appointed as Sub-Inspector in the Customs and Central Excise
Department in the Pune Collectorate, in 1959. On 20th August, 1971 he
was promoted to the post of Inspector (OG), on officiating basis. He
was confirmed as Inspector (OG) on 22.12.1981 and in that capacity he is
at present working at Kolhapur.

3. The applicant passed the Departmental Examination for
Inspectors in December, 1971. The DPC, in its meeting held on 27th and
28th March 1974, did not consider his case for confirmation. That DPC

considered the cases of those who were appointed as Inspector (OG) on officiating basis upto 4.7.1970 only. The applicant was, however, considered for confirmation by the DPC in its meeting held on 23.12.1976. That DPC, however, found him not fit for confirmation. The next DPC was held on 3.10.1977 and that DPC also found him not fit for confirmation. On the same day the DPC was held for considering the cases for crossing the Efficiency Bar. However, the applicant was found not fit for crossing Efficiency Bar (E.B.) by that DPC.

4. We may point out that certain adverse remarks were passed against the applicant for the year 1974-75, which were communicated to him on 10-7-1975. The adverse remarks for that year which were communicated to him were as follows :

PART-II

- | | | | |
|----------------|---------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item No.3(b) : | <u>Quality of disposal</u> | : | His quality of disposal is poor. |
| Item No.4 : | <u>Industry and conscientiousness</u> | : | These are not possessed in full measure required. |
| Item No.6 : | <u>Relation with public</u> | : | His relation with public is satisfactory. But recently some public complaints have come to light. |
| Item No.9 : | <u>General Assessment</u> | : | He has got argumentative type of nature. He shows insubordination and disobedience. He indifferent in submission of Int.(6) (Cotton yarn) and R.T.3 (Matches) giving unwarranted excuses, even though he is instructed many times in these regards. |

5. The applicant made two representations on 22.8.75 and 13.10.75 against the said adverse remarks. On 2.5.77, he was informed to send a copy of his representation dated 22.8.75 as the original was not traceable. The applicant supplied a copy of the representation. The Collector, Central Excise and Customs, Pune, by his letter dated 19.10.77 informed the applicant that he had expunged the adverse remarks against

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items 4 and 6 in the Confidential Reports for the year 1974-75; However, the remarks against items 3(b) and 9 were retained. On other words, the representations of the applicant were partly allowed.

6. Some adverse remarks for the year 1975-76 were also passed against the applicant and the same were communicated to him on 19.11.1976. These were as follows :

PART-III : QUALITY OF WORK

Item No. 1 Quality of Work

His general intelligence is satisfactory that is good. His judgment and sense of proportion is satisfactory that is good. His knowledge of work is satisfactory that is good. His quality of disposal is poor. Thus he has not been able to overcome the defect pointed out against item 3(b) of Part II relating to quality of disposal.

Item No. 2 Promptness in

His speed of disposal is poor. His efforts to reduce arrears are not so satisfactory that is good. Thus he has not been able to overcome the defect pointed out against item 3(b) of Part II of A.C.R. for the year ending 31-3-1975.

Item No. 3 Industry and conscientiousness

His industry and conscientiousness is poor. Thus he has not been able to overcome the defect pointed out in item-4 Part II of the A.C.R. for the year ending 31-3-1975.

Item No. 4 Executive abilities displayed

Executive abilities displayed are poor. The officer has not taken proper steps to remedy the defects pointed out to him during the last year.

The applicant had represented against these adverse remarks but the representation was rejected on 12-12-1977.

7. The applicant was due to cross Efficiency Bar on 1.9.1977. The DPC, in its meeting held on 20-9-1980 allowed him to cross the Efficiency Bar with effect from 1.9.1980. The DPC, in its meeting held on 22.12.81,

confirmed him with effect from the same date.

8. In the suit filed by him on 17.7.1980 the applicant has requested for a declaration that he should be confirmed in the post of Inspector (OG) with effect from 1.2.1973. He has also requested for a declaration that he has crossed the Efficiency Bar from 1.9.1977. Consequently, he has requested for increments. He has also requested for a declaration that the confidential remarks be held as expunged and 'vanished' from his service record.

9. The respondents have resisted the application by filing their written statement when the case was pending in the court of the Civil Judge, Senior Division, Solapur.


10. We have heard the applicant Mr.M.B. Kulkarni in person and Mr.J.D. Desai (for Mr.M.I. Sethna) the learned Counsel for the respondents. We have also perused the relevant record, including the proceedings of the DPCs.

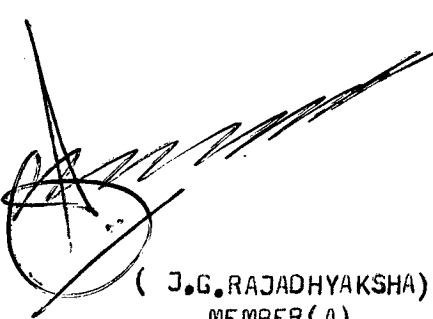
11. At the outset we must make it clear that we are not sitting in appeal against the recommendations of the DPCs. However, we have seen the proceedings of the DPCs held in 1974; 1976 and 1977. The proceedings of the DPC meeting held on 28.3.1974 show that only the officiating Inspectors (OG) appointed upto 4.7.1970 were considered. As the applicant was appointed on 20.8.1971 his case was not considered by that DPC. The next DPC was held in December 1976, and it did consider the case of the applicant. However, it found him not fit for confirmation. In the Annexure against his name some incidents are quoted and probably they weighed with the DPC while finding him not fit for confirmation. The next DPC was held on 3.10.1977 for considering the cases of officiating Inspectors (OG) for confirmation. That DPC also found him not fit for confirmation. It may be recalled that the representation of the applicant against the adverse remarks for the year 1974-75 was only partially allowed. However, representation against the adverse remarks for the year 1975-76 was rejected on 12.12.1977.

12. It was urged by the applicant that the adverse remarks for the year 1974-75 should not have been taken into consideration by the DPCs when his representations were pending. But these adverse remarks could not have been considered by the DPC held on 28.3.1974. The adverse remarks for the year 1974-75 and 1975-76 must be before the DPCs held in December 1976 and October 1977. It is true that representations against the remarks for both the years were rejected after the DPC meetings held in December 1976 and October, 1977. But the representation against the adverse remarks for the years 1974-75 was only partly allowed. Remarks against items Nos. 4 & 6 were expunged but the remarks ^{against} in items 3(b) and 9 were retained. Item No. 3(b) was about quality of disposal and item 9 was about general assessment. The remarks against these items were sufficiently adverse to come in the way of his promotion. The representation against the adverse remarks for the year 1975-76 was totally rejected. Hence merely because the representations were pending when the DPC held its meetings in December, 1976 and October, 1977 that would not entitle the applicant to get the recommendations of these DPC's quashed. It would have been a different thing if his representations against these adverse remarks would have been completely allowed. After considering the proceedings of the DPCs mentioned above we are satisfied that no material irregularity or illegality was committed by any of the DPCs while finding the applicant not fit for confirmation.

13. Regarding crossing of Efficiency Bar also, we find that the DPC held in October 1977 had found the applicant not fit for crossing the Efficiency Bar. He was, however, allowed to cross the Efficiency Bar with effect from 1.9.1980, as he was found fit to cross the Efficiency Bar by the DPC in its meeting held on 20.8.1980.

14. Hence after considering the arguments advanced before us and the relevant records we do not find any merit in the application. We, therefore, dismiss the application (Regular Civil Suit No. 730/80) with no order as to costs.


(M.B. MUJUMDAR)
MEMBER (J)


(J.G. RAJADHYAKSHA)
MEMBER (A)