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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 416/1988.  
T.A. No.

198

DATE OF DECISION 29.8.1989.

Shri Hemant P. Kanade. Petitioner

Shri S.C. Dharmadhikari. Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri P.M. Pradhan. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar, Member (A).

The Hon'ble Mr.

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*

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M*

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No. 416/88.

Shri Hemant P. Kanade,  
Sneha Sadan, 'B' Blocks,  
6th floor, Mangalwadi,  
Girgaum,  
BOMBAY - 400 004.

... Applicant.

V/S

- 1) Union of India,  
Through the Dy. Collector(P&E),  
Central Excise Bombay-I,  
Central Excise Building,  
BOMBAY - 400 020.
- 2) The Chairman,  
Central Board of Excise & Customs,  
NEW DELHI.
- 3) The Secretary,  
Ministry of Finance,  
Department of Revenue,  
NEW DELHI.

... Respondents.

Coram: The Hon'ble Member(A), Shri M.Y. Priolkar.

ORAL JUDGMENT:-

Date: 29.8.1989.

The applicant in this case joined the Central Excise Department on 28.3.1974 as a direct recruit Inspector. There were no adverse remarks regarding his performance until, by communication dated 11.8.1981, adverse entries in his Annual Confidential Report for the year 1980 were conveyed to him. The applicant represented against these adverse entries on 22.9.1981. But his representation was rejected by letter dated 22.10.1983 from the Deputy Collector, Central Excise, Bombay. His request for a personal hearing with the Collector, Central Excise was also rejected and he was asked to approach the Central Board of Excise & Customs. He appealed to the

Board on 18.10.1984 but this appeal was rejected on 3.7.1986. The applicant thereafter submitted a review petition to the President of India on 7.10.1986 but this was also rejected on 8.6.1987. Aggrieved by the fact that his representation, appeal and review petition were all rejected without assigning any reasons, the applicant has approached this Tribunal on 6.6.1988 with the prayer for directing the respondents to expunge the adverse remarks in his Annual Confidential Report of 1980.

2. The respondents have filed their written reply opposing the application. They have contended that his first representation was carefully considered by the Collector of Central Excise after obtaining substantiation reports from the reporting officer as well as the reviewing officer. It is stated that his further appeal to the Board and review petition to the President were also considered carefully alongwith the substantiation reports and then only rejected. I have heard today and on 17.8.1989 Mr. S.C. Dharmadhikari, learned Advocate on behalf of the applicant and Mr. S.R. Atre, for Mr. P.M. Pradhan, on behalf of the respondents and also perused the relevant records.

3. The grievance of the applicant is that, firstly, the instructions of the Government of India, Department of Personnel, dated 18.5.1972 regarding preparation and maintenance of confidential reports have not been observed in this case. Specifically, the time schedules prescribed therein for writing of the confidential reports, communication of the adverse entries and for dealing with the representations against adverse remarks have not been observed. Secondly, all the representations including appeal to the Board and the review petition to the President have been rejected without assigning any reasons. Thirdly, neither the personal interview asked for had been granted by the Collector nor he has been ~~communicated~~ the basis

communicated the basis on which the remarks have been substantiated.

4. As regards the time schedules, the instructions dated 20.5.1972 of the Department of Personnel stipulate in para 8.2. that the adverse entries should be communicated, as far as possible, within one month of the completion of the report. In the case of the applicant, this was done on 11.3.1981 for the report of the year 31.12.1980, i.e. 8 months after the expiry of the calendar year which was covered under the report. Since the time limit prescribed of one month is after the completion of the report, that is writing of the report by the reporting officer, review by the reviewing officer and also acceptance by the next superior authority, and all these three stages together may take normally two or three months, I don't think there has been any unreasonable delay in communicating the adverse remarks in the present case. The applicant's contention that the report is vitiated because of the late communication of the adverse remarks has, therefore, to be negatived.

5. It must, however, be conceded that against the period of 6 weeks stipulated for deciding representations against the adverse entries, the respective authorities have taken considerably longer periods, i.e. almost two years by the Collector, one year and nine months by the Central Board of Excise and Customs and almost one year for deciding the review petition. But, admittedly, the time limits prescribed under these instructions are not statutory time limits or are not in the nature of mandatory instructions but are only to be taken as guidelines. It is also to be noted that during the period these representation/appeal/review petition were under consideration, there has been no occasion where the confidential reports with adverse remarks were considered by any

departmental promotion or other selection committees for the purpose of selection to any higher post. The applicant's grievance in this regard is, therefore not justified, since the delays in deciding his representations have not adversely affected his interests.

6. Regarding the next contention of the applicant that the remarks are not substantiated, I find that the applicant does have a justifiable grievance. This will be clear from the adverse remarks which were communicated, and are reproduced below:-

" PART-II COL.NO.2

|   |  |
|---|--|
| Promptness in attending to work (Evaluate with reference to field duties as well as office work and especially with reference to reduction of arrears and preparation and submission of various reports, returns and maintenance of records). | : " He is having understanding of the principles and objectives of his job, but poorly oriented shows sometimes reluctance to accept the responsibility. I find him poor." |
|---|--|

PART-III COL.NO. 3

|                                 |  |
|---------------------------------|--|
| Industry and conscientiousness. | : " His efforts had little zeal for the job. Finds conventional solution to problems and occasionally shows originality. I find him poor." |
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PART-III COL.NO.5

|            |            |
|------------|------------|
| Discipline | : " Poor." |
|------------|------------|

PART-IV COL.NO.11

|   |            |
|---|------------|
| Overall assessment of performance and qualities | : " Poor." |
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It will be observed from the above that there are adverse remarks against four distinct items, namely (i) promptness in attending to work, (ii) industry and conscientiousness, (iii) discipline and (iv) overall assessment of performance and qualities. Regarding promptness, the adverse remarks is " poorly oriented, shows sometimes reluctance to accept the

responsibility. I find him poor." In my view, this remark is clearly one which could have been easily substantiated by giving atleast a few examples where the applicant had shown reluctance to accept responsibility. The communication of adverse remarks is with a view to give an opportunity to the officers to improve their performance, conduct or character, as the case may be. Unless specific instances are indicated, it will not be possible for the concerned officers to see where they had gone wrong and how they could have improved their performance.

7. The same is the case with the adverse remarks against the next heading which read as follows:-

" His efforts had little zeal for the job.

Finds conventional solution to problems and

occasionally shows originality. I find him poor."

Here also the reporting officer or the reviewing officer could have easily given some concrete examples where originality could have been shown by the applicant rather than going by conventional solution. The next two remarks on discipline and overall assessment as "poor" are also of a general nature. I have perused the applicant's confidential reports for the previous years and all these earlier reports are without any adverse remarks and he has been categorised consistently in the past as a good officer. I am, therefore, satisfied that the writing of his Annual Confidential Report for the year 1980 containing these adverse remarks has not been in accordance with the Government of India instructions regarding writing of annual confidential reports. I have also perused the file of the department in which his representations had been dealt with. No doubt, the Collector has obtained the substantiation reports from the reporting


officer as well the reviewing officer. But even in those reports these two officers have failed to substantiate their remarks by giving concrete examples. In view of this and also, since in his representation the applicant had described exhaustively the work done by him during the period of the report, particularly, a number of specific cases had been mentioned by him which apparently show commendable initiative on the part of the applicant, the Collector of Central Excise should have atleast acceded to his request for personal hearing before finally rejecting his representation.

8. The third argument advanced by Mr. Dharmadhikari in support of his prayer for expunction of adverse remarks is that all these orders rejecting the applicant's representation or appeal or review petition are without assigning any reasons. The Bangalore Bench of this Tribunal has held in a recent judgment (1989 Vol. 10. ATC-477) that "to infuse confidence in the minds of the officials that the administration was being fair to its employees the representation should have been disposed of by a speaking order after considering all the contentions urged by the applicant in respect of each of the remarks recorded against him." There is a similar decision in Haridev Goel's case ¶ ATR 1988(i) C.A.T. 145 ¶ by the Principal Bench. In view of these clear judicial pronouncements, it must be held that all these three orders rejecting the applicant's representation, appeal and the review petition, respectively, cannot be sustained, for not assigning any reasons and not dealing with atleast the major contentions urged by the applicant in his representation.

9. Normally, I would have remanded the case back to the department for communicating to the applicant the facts on the basis of which the adverse remarks were recorded, obtaining the applicant's explanation in writing and disposing of the representations by speaking orders. However, I am told by the learned advocate appearing for the respondents that the

reporting officer who had recorded these adverse remarks in the annual confidential reports for the year 1980 has since expired and the concerned reviewing officer has also retired from service in 1984 or thereabout. The remarks also relate to the year 1980. In these circumstances, no useful purpose will be served by remanding the case back to the department. The only alternative left is, therefore, to expunge the remarks as unfounded, without substituting new remarks in their place. The procedure prescribed in para 9.5(ii)(d) of the Department of Personnel O.M. dated 20.5.1972 could be followed to the extent possible, for this purpose. I am also told that expunction of these remarks at this stage may not have the effect of disturbing any promotions already made since the applicant will be eligible for the first time for being considered for the next promotion to the grade of Superintendent only after a minimum of 16 years service as Inspector i.e. only in 1990.

10. On the basis of the foregoing discussions, the applicant must succeed. I direct that the adverse remarks communicated by letter dated 11.8.1981 in the applicant's annual confidential report for the year 31.12.1980 be expunged on the lines of the procedure prescribed in para 9.5(ii)(d) of the Department of Personnel O.M. dated 20.5.1972. The parties will bear their respective costs.

  
( M.Y. PRIOLKAR )  
MEMBER (A).