

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.914/1999.

Dated: 30/3/2004

Hon'ble Shri Anand Kumar Bhatt, Member (A),

R.K.Routray,
Flat No.408 'B' Wing,
"Radiant", Rajeja Vihar,
Powai,
Mumbai - 400 072.
(By Advocate Shri P.A.Prabhakaran)

...Applicant.

Vs.

1. Union of India,
through the Chairman,
Central Board of Excise & Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. Director General,
Directorate of Revenue Intelligence,
'D' Block Indraprastha Bhavan,
I.P. Estate,
New Delhi - 110 002.
3. R.Bhattacharjee,
Additional Director General,
8, Hochimin Sarani,
2nd Floor,
Suit No.16,
Calcutta - 71.
4. Commissioner of Customs,
Sheva, Jawahar Customs House,
J.N.Road, Dist. Raigad,
Maharashtra.
(By Advocate Shri R.R.Shetty)

...Respondents.

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

The applicant is aggrieved by the adverse entries in his Annual Confidential Report (for short, ACR) for the year 1993-94. The representation of the applicant was rejected by the Chairman, Central Board of Excise & Customs (for short, CBEC). Memorial to the Hon'ble President was also rejected vide letter dt.

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21.11.1995.

2. The grounds taken by the applicant are that the adverse entries are out of malice, extraneous circumstances and wholly subjective. Questioning applicant's contribution in the seizure of Rs.400 crores is uncalled for. From May, 1992 to September, 1994 the applicant worked in the Directorate of Revenue Intelligence (for short, DRI), Cuttack. This unit being in an undeveloped and commercially innocuous State like Orissa, the applicant's duties are confined to act upon intelligence collected by the main office at Calcutta. The remarks have been given by a frustrated officer. The applicant was with the reporting officer only for 5 months from November, 1993 to March, 1994 and the report of the earlier reporting officer should also have been there.

3. In the reply submitted by R-1 (Chairman, CBDT) and R-4 (Commissioner of Customs, Nhava Sheva) it has been stated that the superior officer has assessed the performance of the applicant on the basis of his work. His claim that he has been assessed at least "very good" is his own conclusion and there is no requirement for communication of any remarks which is below the prescribed minimum bench mark for promotion to the next higher grade. As regards the applicant's claim for the operation pertaining to seizure of Rs.400 crores this was conducted by DRI, Calcutta Zone Unit and not by DRI Cuttack Unit. The applicant worked under two different reporting officer during 1993-94. However, the Reviewing Officer remained the same for about 10 months. As the report was written by the reporting officer who

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supervised the work in the latter half of the year and reviewed by the officer who had seen the work of the applicant for 10 months, the need for getting two reports on the applicant was not felt. There was hardly any good point about the applicant for the ACR for the year 1993-94 which could have been communicated to him along with adverse remarks.

4. In the reply filed on behalf of the other two respondents i.e. Director General, Directorate of Revenue Intelligence (R-2) and R.Bhattacharjee (R-3) who is the reporting officer, it has been stated that the applicant's ACRs for the few years is as follows :

1991-92	: Good
1992-93	: Reviewing Authority had written that the applicant is "an average officer with overall grading as Good".
1997-98	: Contained adverse remarks by the Reviewing Authority "good at office work only". In this the word "only" was expunged later on. Thus, the contention of the applicant that itself for ACR of 1993-94 other ACR would be "very good" if not "outstanding" is not correct.

The respondents have admitted in para 6 of their reply about 8 numbers of Central Excise cases involving duty evasion of 53.97 lacs and 7 numbers of Customs cases valued at Rs.39,300/which were detected by the applicant. He also initiated action in two cases relating to M/s.Elcomnet (Rs.22.23 lacs) and M/s. Orient Engineers (3 cases duty evasion Rs.30.33 lacs). As far as the seizure for the said amount of Rs.400 crores, it has been stated that at the time of submission of the resume by the applicant, the amount was not calculated and therefore, it was based only on surmise. At that material point of

time, the applicant was the officer in-charge in Orissa which does not mean that the credit for the cases made on the basis of effort of Calcutta Zonal Unit should go to the applicant. They have further stated that even if the remark of Mr.R.Ramachandran who saw the applicant's work during the first half of the year were there, the remarks of the presenting officer would have been there for the rest of the period.

5. In the oral submissions, Shri P.A.Prabhakaran for the applicant cited the Judgment of the Apex Court in the case of U.P.Jal Nigam Vs. Prabhat Chandra Jain {1996 (33) ATC 217 (SC)} where it has been stated that "extreme variation in the grading may reflect an adverse element compulsorily communicable". He stated that the applicant worked for 7 months with another reporting officer and only 5 months under the reporting officer who gave the applicant an adverse entry. He pointed out that in the DRI CZU letter dt. 7.7.1999, it has been admitted that the duty evasion detected in the case against M/s. Indian Charge Chrome Ltd., Choudwar was Rs.214.43 crores. It has also been stated in the said letter that duty evasion was not to the tune of Rs.4000 crores, however, the show cause notice was issued to the firm for detention of Captive Power Plant valued at Rs.400 crores. He has relied on the Judgment of V.R.Nair Vs. Union of India {1989 (9) ATC 396 (Madras)}, in which it has been held that there should have been two reports of the two reporting officer or the later reporting officer should have procured and considered the views of his predecessor while writing the report. He has cited some more cases which have been discussed later.

6. For the respondents, Shri R.R.Shetty has cited the case

of State of Orissa & Ors. Vs. Jugal Kishore Khatua {1997 (SCC (L&S) 1768}, where it has been held that malafide cannot be proved on the basis of vague allegations which were not made in the representation, more so when the counter signing authority against whom there was no allegation of any bias agreed with the remarks of the reporting officer. That the reporting officer was negative and frustrated has not been proved by any evidence. He stated that the scope of judicial review is limited. He also mentioned Wednesbury's principle that administrative discretion should not be questioned. He cited Nutan Arvind (SMT) Vs. Union of India & Anr. {1996 SCC (L&S) 529}, where it has been held that in consideration of confidential reports by DPC, whether such reports written by an officer not competent to review the appellants performance and to write the confidential report is not subject to judicial review.

7. I have considered the case and perused the various citations given by the counsel for the applicant. In M.A.Rajasekhar Vs. State of Karnataka and Anr. {1998 SCC (L&S) 574} giving additional remark that the "petitioner does not act dispassionately when faced with dilemma", without giving specific instances of working unsatisfactorily and without affording any opportunity to correct himself has been held to be illegal. However, the remark which has been given in the cited case which is impugned is not of a general nature and in the present case any such remark about not acting dispassionately when faced with dilemma has not been given. The assessment made by the reporting officer under whom the applicant was working and it is difficult to consider it having been given out of malice only because the

reporting officer himself was not a very bright and a superseded officer. The amount of Rs.400 crores for which the applicant in his self-assessment has taken credit for is not correct as is clear from the letter dt. 7.7.1999 (Annexure - 'G') in which it has been mentioned that it was only the notice under section 110 of the Customs Act as issued for detention of plant which was valued at Rs.400 crores. In the said letter it has been pointed out that the exact amount of duty evasion has been detected as Rs.214 crores. However, it has been rightly pointed out by the reporting officer that this was entirely the work of DRI CZU and the applicant who was A.D. in DRI Cuttack cannot be credited for the work as claimed by the applicant in his self-assessment. This remark has been made specifically as required in part 3 where the reporting officer has to comment on the self-assessment made by the applicant. About executive abilities of the applicant, the reporting officer has mentioned that he lack initiative and drive and he has given examples to further clarify his remarks. The applicant has summarised that his other CRs must be 'very good' or 'outstanding'. However, it has been stated by R-2 and R-3 in their reply that his ACRs for 1991-92 and 1992-93 were 'good' and for 1997-98 the remark by the reviewing authority was "good at office work only". However, the word "only" was expunged later. In such circumstances, the ratio of U.P.Jal Nigam (supra) cannot be applied as this relates to extreme variation in gradation such as the 'outstanding' gradation in one year followed by 'satisfactory' in the succeeding year. Moreover, this applies to the rules prevalent in U.P.Jal Nigam. It has been clarified by the

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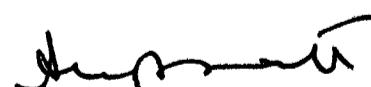
Respondents R-1 and R-4 in para 4 of their reply that as per the orders of the government on the subject only adverse remarks are to be communicated and there is no requirement of communication of remarks which are below the bench mark for promotion to the next higher grade. From 'average' or 'good' to 'below average' cannot be considered to be an extreme variation in gradation and therefore benefit of cited case cannot go to the applicant.

8. Ravendra Mohan Dayal Vs. State of Maharashtra & Ors. {1998) 37 ATC 118}, relates to adverse remarks with regard to conduct, reputation and character assessment not based on records, but based on knowledge of the officer. In the instant case no remarks have been made by the reporting officer regarding reputation or integrity of the applicant.

9. In Swantantr Singh Vs. State of Haryana & Ors. {1997 SCC (L&S) 909}, it has been held that if the employee shows improvement, the departmental authorities are expected to make a mention of it in the subsequent reports. This point is not under issue in the present case.

10. Union of India & Ors. Vs. N.R.Banerjee and Ors.{1997 SCC (L&S) 1194} relates to DPC, zone of consideration and period upto which the ACRs have to be considered in case of delay. The issue in the present case is entirely different in the cited case.

11. To sum up, I do not find any reason to expunge the adverse remarks given in the ACR of the applicant for the year 1993-94. OA is dismissed. No costs.



(ANAND KUMAR BHATT)
MEMBER (A)

B.