

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH BANGALORE

DATED THIS THE 4TH DAY OF FEBRUARY 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)

Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION No.1521/86

Madhukar Raghavendra Jakati  
Inspector of Central Excise  
Office of the Supdt of Central Excise,  
Dandeli, North Kanara - Applicant

and

1. The Central Board of Excise and Customs, New Delhi represented by its Secretary
2. The Controller of Central Excise, Central Revenue Buildings, Queens Road, Bangalore 1
3. Asst. Collector (HQ RS)  
Office of the Controller of Central Excise and Customs, Central Revenue Buildings, Queens Road, Bangalore 1
4. Union of India by its Secretary  
Department of Customs & Central Excise, Parliament Street, New Delhi
5. G.S.Pattana Setty  
Inspector of Central Excise,  
Dept of Central Excise & Customs, Karnataka State - Respondents

(Sri M.S. Padmarajaiah, Senior C.G.S.C.  
for respondents 1 to 4)

This application came up for hearing before this Tribunal and Hon'ble Ch. Ramakrishna Rao, Member (J) to-day made the following

O R D E R

This application was initially filed in the High Court of Karnataka as a writ petition and subsequently transferred to this Tribunal. The grievance of the applicant is that though the respondent No. 5 ('R5') was placed lower

than himself in the seniority list ('SL') of Central Excise Inspectors of 1977, R5 was placed higher than the applicant in the SL of 1979.

2. Shri M.S.Padmarajaiah, Senior C.G.S.C., appearing for the respondents submits that the name of the applicant was duly considered by the Departmental Promotion Committee ('DPC') which met in 1978 but found 'not yet fit for confirmation'; that R5 was considered fit for confirmation and accordingly confirmed. However, when the DPC met later in 1980, it found him fit and was confirmed. In view of the delay in confirmation R5 stole a march over the applicant in the matter of seniority.

3. We have perused the DPC proceedings <sup>u.k</sup> ~~which were~~ produced by Shri Padmarajaiah, which substantiated the submission of Sri Padmarajaiah. The claim of the applicant for confirmation having been duly considered by the DPC, we are not competent to sit in judgement over the decision of the DPC in the absence of any allegation of malafides against any member of the DPC which has not been made in the present case.

4. In this connection we note that during 1978, the applicant was informed of certain adverse entries in his annual confidential report for the period ending 31.3.1977. He made a representation against the same to the competent authority for expunging the adverse remarks (Annexure B). After considering the same, the competent authority rejected his representation (Annexure H). In our view, though the

adverse remarks were on record when the proceedings were held in 1978, they have not in any way prejudiced the applicant since ultimately the representation of the applicant for expunging the adverse remarks was not accepted by the competent authority.

5. In the result the application is dismissed.

No order as to costs.

Unanimously

4-2-87

Member (J)

Member (A)

4-2-87

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCHREVIEW APPLICATION No. 23/87

(WP. NO.)

COMMERCIAL COMPLEX, (BDA)  
INDIRANAGAR,  
BANGALORE-560 038.

DATED: 9-4-87

APPLICANT

Vs

RESPONDENTSShri Madhukar Raghavendra Jakati  
TOThe Central Board of Excise & Customs  
and 4 Ors

1. Shri Madhukar Raghavendra Jakati  
Inspector of Central Excise  
Office of the Superintendent of  
Central Excise  
Dandeli  
North Kanara
2. Shri S.P. Kulkarni  
Advocate  
4306, High Point IV  
45, Palace Road  
Bangalore - 560 001
3. The Secretary  
Central Board of Excise & Customs  
Indraprastha Estate  
New Delhi
4. The Controller of Central Excise  
Central Revenue Buildings  
Queen's Road, P.B. No. 5400  
Bangalore - 560 001
5. The Asstt Collector (HQ RS)  
Office of the Controller of Central  
Excise and Customs  
Central Revenue Buildings  
Queen's Road, P.B. No. 5400  
Bangalore - 560 001
6. The Secretary  
Department of Customs & Central Excise  
Parliament Street  
New Delhi
7. Shri G.S. Pattana Setty  
Inspector of Central Excise  
Department of Central Excise & Customs  
Karnataka State
8. Shri M. S. Padmarajaiah  
Senior Central Govt. Stng Counsel  
High Court Buildings  
Bangalore - 560 001

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE  
BENCH IN APPLICATION NO. 23/87

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Please find enclosed herewith the copy of the Order  
passed by this Tribunal in the above said Application on31-3-87ENCL: As above.B.V. Venkateswaran  
DEPUTY REGISTRAR  
(JUDICIAL)

CC: 2 file  
Ans. 1521/86 (P)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH BANGALORE

DATED THIS THE 31st MARCH 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)  
Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION No. 1521/86  
(R.A.NO. 23/87)

Madhukar Raghavendra Jakati  
Inspector of Central Excise  
Office of the Superintendent of Central  
Excise, Dandeli  
North Kanara

**- Applicant**

(Sri S.P. Kulkarni, Advocate)

and

This application came up for hearing before the Tribunal and Hon'ble Sri Ch. Ramakrishna Rao, Member (J) to-day made the following

## ORDER

This application was initially filed as a writ petition in the High Court of Karnataka and subsequently transferred to this Tribunal. It was heard ~~and~~ ex-parte.

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and decided on 4.2.1987. The applicant moved this Tribunal for setting aside of our order on the grounds urged in R.A. No. 23/87 ('RA' for short) filed by him. In and by our order dated 6.3.1987 we restored the application to file and heard the matter afresh on 24.3.87 on merits. In the light of the arguments advanced by the learned counsels for both sides we proceed to deliver the following

O R D E R

The facts giving rise to the application are, briefly, as follows. The applicant joined service in the office of the Controller of Central Excise as Inspector of Central Excise on 24.8.1972. On 29.10.1977 a seniority list ('SL' for short) was prepared wherein respondent no. 5 (R5) was placed at serial number 223 while the applicant was placed at serial number 222. Thus the applicant was senior to R5. In 1979 another SL was prepared in which R5 was placed at sl.no. 224 in para I permanent, whereas the applicant was shown at sl.no. 27 in para II Officiating. Thus R5 stole a march over the applicant, which continued in subsequent years. The applicant attributes the change in his position in the SL in 1979 to the adverse remarks in his annual confidential report ('ACR') communicated to him in 1978 for the year 1977. Though he represented to the authorities for expunging the adverse remarks his representation was still pending when the promotions were effected in 1979. The applicant, therefore, prays for quashing the letter dated 24.10.1981 (Annexure 'D')

wherein it was stated that he was not found fit by the Departmental Promotion Committee ('DPC') which met in November 1978 and the letter dated 2.6.1982 (Annexure 'H') wherein he was informed that the Collector of Central Excise, Bangalore ~~had~~ <sup>re</sup> carefully considered his presentation but found no ~~no~~ justification to expunge the adverse remarks in his ACR for the period ending 31-3-1977.

2. The first contention of Shri S.P. Kulkarni, learned counsel for the applicant, is that the respondents erred in acting on the assessment made by the DPC when the application for expunging of adverse remarks was still pending and this has prejudiced his client since he could not retain the position he was occupying in the SL of 29.10.1977 when the subsequent SL of 1979 was prepared.

3. Sri M.S. Padmarajaiah, Senior C.G.S.C., appearing for the respondents submits that the DPC had not taken the adverse remarks against the applicant into account, as apparent from the fact that though he was not found fit in November 1979 he was considered fit ~~later~~ <sup>afresh</sup> in 1980 when he was considered and his name figured in Part I permanent of the SL which was prepared on 18.6.1981.

4. We have considered the ~~no~~ rival contentions carefully and also perused the relevant material produced before us. We are not prepared to accept the plea of the applicant that the adverse remarks weighed with the DPC because though the applicant was found not yet fit for confirmation in 1978 he was confirmed later in 1980 when his representation for expunging the adverse remarks was still pending.

5. Shri Kulkarni next contends that the representation made by his client was rejected by the Collector of Central Excise & Customs in his order dated 2.6.1982 (Annexure 'H') without giving any reason.

6. Sri Padmarajaiah submits that it is apparent from the letter dated 2.6.1982 (Annexure 'H') that the Collector of Central Excise & Customs had considered the representation of the applicant against the adverse remarks and as there is compliance with the procedure relating to the entry of adverse remarks in the ACR the applicant cannot make a grievance of the fact that ~~th~~ no reason has been given.

7. In our view any adverse entry in the ACRs made after giving an opportunity to the affected officer to represent against the same does not cast any stigma on the officer concerned as held by the Supreme Court in Oil & Natural Gas Commission v MD S. Iskender AG 1980 SCC (L&S) 446. The position may be different if any allegation of mala fides is made against the authority who made the adverse remarks, which is not the case here. Further as held by the Supreme Court in Baldeo Raj Chadha v. Union of India (1981) SC L & S 1, "confidential reports are often 'subjective and impressionistic' ". In view of these decisions rendered by the highest Court of the land we are satisfied that the order of the Collector of Central Excise & Customs (Annexure 'H') is valid.



8. The last contention of Shri Kulkarni is that a number of Inspectors of Central Excise junior to his client were placed above his client in the SL prepared on 18.6.1981 and there is no justification for the same.

9. Sri Padmarajaiah submits that a representation was made by the applicant in this behalf to the Collector of Central Excise & Cutoms who in his letter dated 13.10.1982 (Annexure 'J') turned down the applicant's request for restoring his seniority.

10.

In our view, all the facts relating to the supersession of the applicant by other Inspectors of Central Excise have not been placed before us by the applicant. We also note that the Collector of Central Excise & Customs in his letter dated 8.9.1983 in reply to the representation of the applicant dated 23.7.1983 (Annexure 'J'), has stated that the Inspectors of Central Excise mentioned in his representation though appointed later to him rank senior to him by virtue of the quota system followed between DRs/UDC promotees/EGs promotees while fixing the seniority. If the applicant is still aggrieved because of his supersession by the Inspectors of Central Excise junior to him, it is a matter to be taken up with the authorities explaining the aspects raised by the Collector of Central Excise & Customs in his letter dated 23.7.1983 (Annexure L) as also

other aspects, if any, which have a bearing on the subject. We are not, therefore, in a position to grant any relief to the applicant.

11. In the result the application is dismissed.  
No order as to costs.

Sd/-

Member (J)

Sd/-

Member (A) *7/14/87*

-TRUE COPY-

B. V. Untitled (a)  
DEPUTY ATTORNEY GENERAL  
7/14/87

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