

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 17 MAR 1989

APPLICATION NO. (x) 1794 / 88(F)

W.P. NO. (s) _____

Applicant (x)

Shri G.B. Purohit

To

v/s

The Collector of Central Excise, Bangalore

1. Shri G.B. Purohit
H.No. 2527/1, (Upstairs)
M.C. Colony, 'A' Block
Behind Ramakrishna Ashrama
Davanagere - 4
2. The Collector of Central Excise
71, Club Road
Bangalore - 560 001
3. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Respondent (s)

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STAX/ZINTERIM ORDER
passed by this Tribunal in the above said application(x) on 17-3-89.

9/89
K.M.J.W.
20.3.89

0/c

P.A. Venkatesh
DEPUTY REGISTRAR
(JURISDICTION)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE 17th DAY OF MARCH, 1989

PRESENT : HON'BLE SHRI P. SRINIVASAN MEMBER (A)

APPLICATION NO. 1794/88

1. G.B.Purohit,
Stenographer,
Office of the Asst. Collector,
Central Excise,
IV Floor,
PVS Sadan,
MANGALORE - 3.

... APPLICANT

Vs.

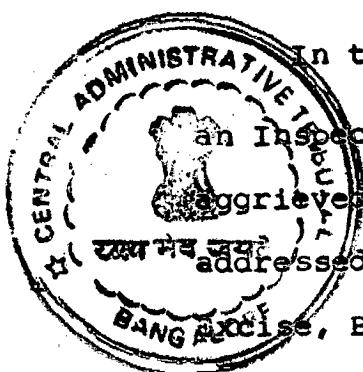
2. The Collector of Central Excise,
No.71, Club Road,
BELGAUM.

... RESPONDENT

(Shri M.Vasudeva Rao, Advocate)

This application having come up for hearing before
this Tribunal to-day, Hon'ble Shri P.Srinivasan, Member,
made the following :-

O R D E R

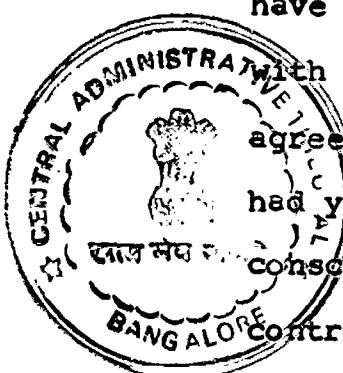


In this application, the applicant, who was working as an Inspector of Central Excise at the material time, is aggrieved with the contents of a letter dated 28.10.1987 addressed to him by the Additional Collector of Central Excise, Belgaum, conveying the decision of the Collector of Central Excise, Belgaum - the sole respondent in this case-, by which the applicant's representation against

P. S. Rao

adverse remarks recorded in his annual confidential report for 1986 was rejected. He seeks a direction from this Tribunal to the respondent to expunge the said adverse remarks.

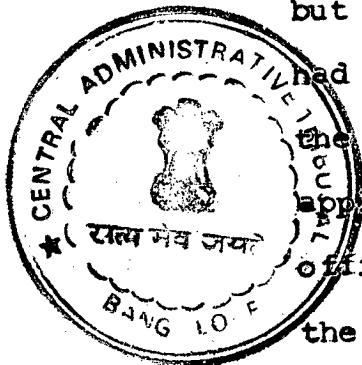
2. The applicant, who presented his case personally, contended that in his representation against the adverse remarks, he had alleged malice against the Reporting Officer which had led to the recording of the adverse remarks. His representation running over 17 pages included detailed explanation as to why every adverse remark made against him was unjustified, but the Collector of Central Excise, Belgaum, had rejected the representation without assigning any reasons for doing so and without dealing with the detailed objections raised in the representation. The applicant had sought personal hearing in his representation, but the Collector rejected his representation without giving him any hearing and so his order was bad in law particularly since serious allegations had been made on both sides. In fact, the reviewing officer himself should have given the applicant a personal hearing before agreeing with the reporting officer. The reporting officer, after agreeing with the resume of the work given by the applicant, had yet gone on to record that the applicant was not a conscientious worker and was not punctual in attendance, thus contradicting himself. There was an adverse comment on the applicant's indebtedness, based on a letter addressed by a



P. S. G.

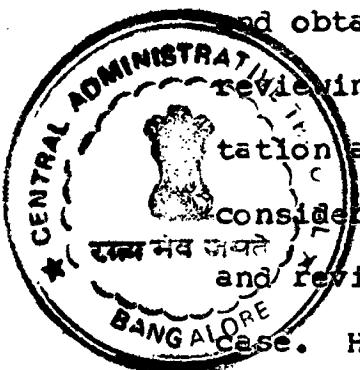
trader to the Assistant Collector of Central Excise alleging that the applicant had not paid a certain amount which was due from him. According to the applicant, he had already paid that amount (Rs.87.50) and it was, therefore, a disputed claim. Merely on the basis of the letter of the trader, the reporting officer should not have assumed that the applicant was indebted. The amount involved was small which the applicant was always in a position to pay, but he had denied the trader's claim that the amount was due and it was on this account that he had refused to pay the amount. It was therefore not a case of indebtedness about which a remark could be made in the confidential report. One adverse remark complained about the applicant's alleged quarrelsome nature, but no proof of such quarrelsome ness had been furnished, nor was any instance given of any acts of alleged indiscipline and insubordination. Similarly, no evidence had been given in the report to support another adverse remark alleging that he evaded responsibility and lacked initiative. There was another remark alleging that the applicant was not very punctual in attendance, but there was nothing to show that the reporting officer had taken note of any unpunctuality of the applicant during the period reported upon and had issued any warning to the applicant on that account. On the contrary, the reporting officer made no comment on the applicant's punctuality in the register which the applicant had to submit every week. The applicant had also a different version to give in

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respect of his visit for stock-taking on 5.12.1986, which had been adversely commented upon. He would have been able to explain all this to the Collector, if he had been given an opportunity of being heard. Thus, the impugned order rejecting his representation was violative of the rules of natural justice in so far as he was not given an opportunity of being heard, and the order itself was a non-speaking order which did not deal with the detailed explanation on every point furnished by the applicant. It was an order passed without application of mind. Since the adverse remarks visited civil consequences on the applicant by affecting his future career prospects, the violation of the principles of natural justice was all the more serious. The recording of these remarks in the first instance was arbitrary and the rejection of the applicant's representation against them by the respondent was even more so.

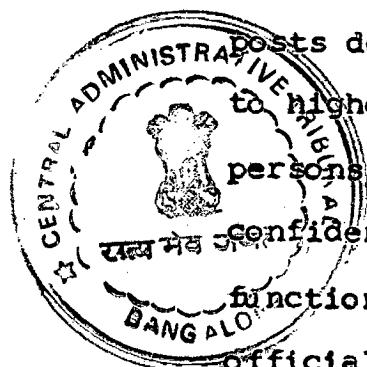
3. Shri M.Vasudeva Rao, learned counsel for the respondents, denied the allegation that the applicant's representation against the adverse remarks had been rejected without application of mind. The respondent had called for and obtained detailed reports from the reporting and the reviewing officers after receiving the applicant's representation and had come to the conclusion which he did after considering the representation, the reports of the reporting and reviewing officers and the facts and circumstances of the case. He was not required to give the applicant an opportunity of being heard because he was not conducting a disciplinary proceeding against the applicant. Nor was the



P. S. Iyer

respondent required to deal with each and every point raised in the representation while rejecting it. Each column in the confidential report dealt with different qualities and capabilities of the officer commented upon and therefore a favourable remark against one did not preclude the reporting officer from recording an adverse remark against the other. Acceptance of the resume of the work furnished by the applicant did not preclude the reporting officer from commenting on his amenability to discipline, the initiative displayed by him in his work and so on. Though the applicant had suggested malice on the basis of the alleged contradiction between favourable remarks against some columns and unfavourable remarks against others, the respondent did not find any evidence of such malice and so rejected the allegation. Shri Rao, therefore, submitted that the action of the respondent in rejecting the representation of the applicant was perfectly valid and this Tribunal should reject the applicant's prayer to quash the same.

4. I have considered the matter very carefully. The writing of annual confidential reports on Government servants serves a two-fold purpose. Placement of officials in particular posts depends on their suitability for those posts and promotion to higher posts ^{has} ~~has~~ to be based on the relative merits of the persons in the field. Regarded this way, the writing of a confidential report is primarily and essentially an administrative function. On the other hand, it affects the career of the official reported upon and an adverse remark could deny him promotion when it is due and could even ruin his career. There



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is no question that whatever be the point of view namely that of the administration or of the official's own career, remarks in the confidential report should be made carefully and objectively, based on facts and should not be influenced by prejudice and considerations irrelevant to the efficient performance of official duties entrusted to the officer. Normally this Tribunal would be loathe to interfere in cases of complaints against adverse remarks and to substitute its own judgement for that of the reporting and reviewing officers. It is these officers who are best suited to judge the qualities of officials working under them and their competence in the performance of official duties. But where it is shown that the remarks in a confidential report are palpably due to malice or animus and are not based on actual facts or events, this Tribunal will have to remedy the wrong done to the official reported upon and strike down the adverse remarks. The making of adverse remarks in the confidential reports cannot be equated to disciplinary proceedings initiated against a Government servant because, as already stated, the main purpose of writing annual confidential report is to determine the suitability of each official for promotion or placement in particular posts and not to enquire into any charge against him. Therefore, it is not necessary in all cases that the reporting or the reviewing officer should give the officer reported upon an opportunity of being heard before recording adverse remarks and similarly, when a representation is made against adverse remarks, it is not in every case that the senior officer dealing with the representation should give the official reported upon an opportunity of being heard.

P. S. U.



Where, however, an adverse remark is based on some incident which occurred in the course of performance of duties by the official whose report is written, there could be more than one version of the facts and the role of the said official in the said incident. In such cases, it is only proper that when a representation is made by the official against whom adverse remarks have been recorded, he is given an opportunity of being heard by the senior officer dealing with the representation to show that the incident had been wrongly reported or that his role in the incident was above reproach.

5. It would be convenient at this point to set out the text of the adverse remarks made against the applicant in his character roll for the year 1986 :-

" PART II :

I agree with the resume furnished by the Officer, Sri G.B.Purohit, Inspector C.Ex. is a departmental steno promotee with MA., LLB. degree. He is of quarrelsome nature and very often misbehaves with superior Officers addressing in singular and arguing on wrong side. He wants to ascertain each and every right without performance of corresponding duty.

PART III : (3) Industry and Consciousness :

Not a conscious worker. On 5-12-86 he visited Ranebennur for stock taking work and halted there for the night even though the licence was cancelled long back with a sole idea of claiming full daily allowance which was not due JUST ADEQUATE.

(4) Executive abilities displayed :

Avoids responsibility and lacks initiative and drive - JUST ADEQUATE.

(5) Discipline :-

Most indisciplined and insubordinate with quarrelsome nature and often misbehaving with superior Officers - POOR.



(6) Punctuality in attendance :-

Not very punctual in attendance to office but just attends to work allotted - JUST ADEQUATE.

(7) Other observations if any :-

(a) Free from addiction to drink, gambling and family problems but not free from indebtedness. Since receiving regular letters on Official address for payment of old dues from a cloth merchant of Bellary - JUST ADEQUATE".

6. Turning to the first remark, the particular column against which they were made requires the reporting officer to obtain from the officer reported upon a brief resume of the work done by him and after perusing it, to make a factual evaluation of the important items of work done with comments on the resume itself and to mention specific facts having a bearing on the performance. The applicant's main contention is that when the reporting and reviewing officers agreed with the resume as they did in this case, there was no justification for them to make any adverse remark. This does not appear to be correct. Agreeing with the resume only means that it is factually correct. But, thereafter, if there are specific factors which stood in the way of better performance by the official concerned, the reporting officer is not precluded from mentioning them. In this case, the reporting officer has referred to ^{the} applicant's quarrelsome nature, his misbehaviour with superior officers and his tendency to insist on his rights without necessarily performing the corresponding duties. The implication seems to be that if he was not quarrelsome, and if he had behaved well with his superiors, his performance could have been better. This is a judgement of the reporting officer about one aspect of the applicant's personality concerning his relationship with others in the office. It is obviously

based on the applicant's conduct throughout the year. It would be indeed impractical to require the reporting officer to list out each and every occasion in which these qualities were displayed by the applicant. The same applies to the reviewing officer who agreed with this comment and to the respondent who declined to expunge this remark. To say that all of them were prejudiced against the applicant in making this remark, would be stretching things too far. On the other hand, it would be quite improper for me to substitute a different opinion on the matter for that expressed by the departmental officers who were best suited to judge the applicant in this regard. In this view of the matter, I would reject the applicant's contention that the respondent be directed to delete this remark.

7. I now turn to the adverse remark concerning 'Industry and Consciousness'. Curiously enough, the column appearing in the form used in this case reads 'Industry and Consciousness' and the reporting officer also states that the 'applicant is not a 'conscious worker''. I proceed on the ground that what is meant here is 'conscientiousness'. Here what we find is that the reporting officer refers to a particular incident which is said to have occurred on 5.12.1986.

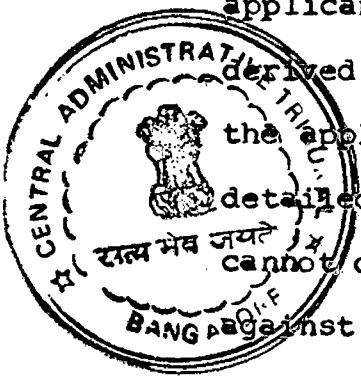

The applicant disputes that he visited Ranebennur on that date for stock-taking as alleged in the remark and the respondent in his reply states that the date was wrongly mentioned as 5.12.1986, instead of 17.9.1986. As observed earlier in this order, where a remark is based on a particular incident

15-10-86

it is only proper that the official against whom the remark is made, is given an opportunity to give his version of the incident and to show that he was not blameworthy. I am, therefore, of the view that in respect of this remark, the respondent should have given the applicant an opportunity of being heard before rejecting his representation against it. He will now do so and pass a speaking order dealing with all the contentions urged by the applicant in this regard.

8. The next adverse remark relates to executive abilities displayed by the applicant. As will be seen from the remark extracted above, it states that the applicant avoided responsibility and lacked initiative and drive. This is an observation which is necessarily to be based on the impression gained by the reporting officer over the whole year of the applicant's qualities in this regard. It would again be impractical to expect the reporting officer or the reviewing officer to list out occasions on which responsibility was avoided or lack of initiative was displayed. The respondent also had to act on the general impression created by the applicant and his reputation in this regard. Since it is not

derived from any particular incident, the question of giving the applicant an opportunity of being heard or of writing a detailed order while rejecting the applicant's representation cannot obviously arise. Therefore, the applicant's grievance against the order of the respondent rejecting his representation in regard to this remark, deserves to be rejected and is, therefore, rejected. *P. J. B.*



9. The next adverse remark relates to discipline wherein the reporting officer has stated that the applicant is most indisciplined, insubordinate and quarrelsome and was guilty of misbehaviour with superior officers. The remark is more or less similar to the first remark dealt with above, being based on an observation of the applicant's qualities and behaviour throughout the year. The applicant's objection to the rejection of his representation against this remark cannot also be sustained because, to repeat, it is not something which requires an opportunity of being heard being given or of a detailed order being written as to why the representation was being rejected.

10. Similar is the situation in regard to the adverse remark regarding punctuality. It is not necessary that in every weekly report submitted by the applicant, the reporting officer should have recorded instances of unpunctuality, if any, of the applicant. It is a trait obviously noticed by the reporting officer over the whole year and it is again impractical to expect instances to be cited or to require the respondent to pass a detailed order for rejecting

the representation of the applicant. The order of the respondent in so far as this remark is concerned is, therefore, upheld.

11. The last of the adverse remark refers to indebtedness and is based on letters issued by a trader to the



P. S. B. 2

applicant and to the authorities complaining that a small bill amounting to Rs.82.50 had not been paid by him. The applicant submitted that he was disputing the claim because he had already paid the amount. The amount is so small that the applicant could easily have paid it from his salary if he did not dispute it. Indebtedness in this context would mean habitual indebtedness, incurring expenditure disproportionate to the income and thereby mounting up debts which cannot be repaid. Such a situation would arise due to intemperate habits and indiscriminate spending. One instance of a small trader's bill not being paid and that too where the Government servant asserts that he is not due to pay that amount at all, cannot be characterised as indebtedness on his part. I, therefore, feel that there was no evidence before the reporting and reviewing officers as well as the respondent to hold that the applicant was not free from indebtedness, the only material before the authorities having no relevance to the subject of indebtedness. The respondent should, therefore, have deleted this adverse comment as not being supported by any evidence whatsoever and in not doing so, I feel he acted arbitrarily. The respondent is, therefore, directed to delete this adverse remark from the confidential report of 1986 of the applicant.



12. The applicant has cited a large number of cases decided by the High Courts and the Supreme Court to support his contention that the order of the respondent was legally flawed because no opportunity was given to him of being heard

P. S. K. B.

and the order itself was bald and devoid of detailed reasons. The observations in each of these cases were based on the peculiar facts of that case and are not of universal application. It is, therefore, not necessary to burden this order with the details of those cases. I have considered the matter in the light of the facts of this case and have come to ^{the} conclusions ~~which~~ I have set out above.

13. In the result

(1) The respondent is directed to give the applicant an opportunity of being heard in respect of adverse remarks conveyed under the head "Industry and Conscientiousness" and to record a speaking order after considering all the contentions urged by the applicant. He will do so within three months of the date of receipt of this order. To enable him to do so, the impugned order passed by him and conveyed to the applicant by letter dated 28.10.1987 by the Additional Collector of Central Excise (Annexure A2 to the application) is set aside to the extent it relates to this remark.

(2) The respondent is directed to delete the adverse remark under the head "Other Observations if any".

(3) The impugned order of the respondents so far as it relates to other adverse remarks is upheld.

14. The application is disposed of on the above terms

R. J. B.



leaving the parties to bear their own costs.

Sd/-

SHRI P. SRINIVASAN
(MEMBER (A))

TRUE COPY

R. Venkatesh Rao
DEPUTY REGISTRAR (JDL) 17/3
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE