

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Camp: Goa.

Original Application No: 311/93

~~Transcript on record~~:

DATE OF DECISION: 25.11.94

Shri B.V. Narvekar

Petitioner

Shri S.V. Nabak

Advocate for the Petitioners

Versus

Collector of Central Excise, Panaji
--Goa--and--Ans--Respondent

Shri G.R. Sharma

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri P.P. Srivastava, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

CAMP : GOA

O.A. NO. 311/93

Shri B.V. Narvenkar ... Applicant
v/s

Collector of Central
Excise, Panaji, Goa & Anr. .. Respondents

CORAM

- 1) Hon'ble Shri B.S. Hegde, Member (J)
- 2) Hon'ble Shri P.P. Srivastava, Member (A)

APPEARANCE

- 1) Shri S.V. Nabak, Advocate for the Applicant
- 2) Shri G.R. Sharma, Advocate for the Respondents

JUDGEMENT

Dated: 25-11-96

(Per: Hon'ble Shri B.S. Hegde, M(J))

1. The Applicant has filed this O.A. under section 19 of the CAT Act against the adverse remarks stated to have been made by the Respondents during the period 1-1-1987 to 31-12-1987 vide their order dated 22-3-1988 (Annexure 'A') which he has challenged in this O.A. The main ground/s stated in the O.A. is that during the entire service, the Applicant's service record is clean and no adverse remarks have been made till order dated 22-3-1988. Secondly, his performance is not upto the mark and it is obligatory on the part of the Respondents to guide the Applicant to enable him to overcome his deficiency and rise to the desired level of competence etc. None of these has been done in this case.

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Thirdly, the order passed by the Asstt. Collector of Customs is a non-speaking order etc. Accordingly, he prayed for expunction of the adverse remarks passed ~~against~~ ^{against} him.

2. As against the adverse remarks communicated by the Respondents, he preferred an appeal to the Asstt. Collector vide dated 15-4-1988 which has been considered by the Respondents vide their letter dated 12-2-1988 rejecting the representation of the Applicant, ~~against~~ which he preferred an appeal to the Principal Collector which has been looked into by the competent authority who ^{also} rejected the same vide their letter dated 2-9-1992.

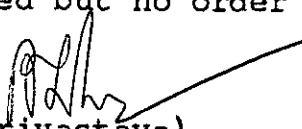
3. The Respondents in their reply denied the contention of the Applicant and stated that the adverse remarks communicated are based on proper reasoning and on the strength of warning issued to him in writing and also orally from time to time. Nevertheless, he did not show any sign of improvement; therefore, they ^{been} ~~are~~ compelled to issue ^{the} Memorandum dated 30-11-1987. Further, they contend that it is not the case of the Applicant that the concerned officer has any bias against the Applicant or that he was prejudiced against the Applicant. His main contention is that no other officer has passed any adverse remarks against him; therefore, it is wrong on the part of the concerned officer to pass any adverse remarks during the relevant period. As a matter of fact, the Applicant has been informed about various deficiencies and/or shortcomings and he has been directed to improve upon himself. Since ^{The Respondents} ~~they~~ have not violated any rules in communicating the adverse remarks, the Courts should be reluctant to

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interfere with any such matters; therefore, the entire O.A. is without any substance and devoid of merits and the same is required to be dismissed.

4. We have heard the learned counsel for both the parties and perused the pleadings. In the facts and circumstances, the learned counsel for the Applicant has not shown to us any violation of the rules in communicating the adverse remarks and the disposal of the representations and no foundation has been laid down by the Applicant for expunging the adverse remarks passed by the Respondents on the grounds of prejudice or malafide. An administrative action cannot be said to have offended against Art. 14 of the Constitution unless it is malafide or actuated by hostile intention. Such malafide administrative action is never presumed but has to be proved. In the instant case, the Applicant has not shown any such action on the part of the Respondents.

5. In the circumstances, we are of the view that the Application is devoid of merits and the same is dismissed but no order as to costs.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

ssp.