

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 809 of 1994.

Dated this Tuesday, the 4th day of April, 2000.

Mahadeo Maharudrappa Kamble, Applicant.

Shri R. Ramamurthy, Advocate for the
applicant.

VERSUS

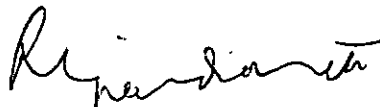
Union of India & Others, Respondents.

Shri V. D. Vadhavkar for Advocate for the
Shri M. I. Sethna, Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
(iii) Library.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

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CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.
Hon'ble Shri D. S. Baweja, Member (A).

Mahadeo Maharudrappa Kamble,
Residing at - Survey No. 33/2,
Plot No. 7, Tingare Nagar,
Pune - 411 032.
Employed as Inspector of
Central Excise & Customs,
O/o. the Superintendent of
Central Excise, Chinchwad Range-I,
Chinchwad, Pune - 411 019.

... Applicant.

(By Advocate Shri R. Ramamurthy)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 011.
2. The Deputy Collector (P&E),
Central Excise & Customs,
P.M.C.'s Commercial Building,
Hirabaug Tilak Road,
Pune - 411 002.
3. Collector of Central Excise
& Customs,
P.M.C.'s Commercial Building,
Hirabaug Tilak Road,
Pune - 411 002.
4. Joint Director (N.E.),
Central Bureau of Investigation,
New Delhi.
5. Deputy Inspector General of Police,
Central Bureau of Investigation,
Tanna House, Nathalal Parekh Marg,
Bombay.

6. Assistant Collector (Vig.),
Customs & Central Excise
Headquarters,
P.M.C's Commercial Building,
Tilak Road,
Hirabaug,
Pune - 411 002.
7. The Secretary,
Central Board of Excise & Customs,
Ministry of Finance,
Government of India,
North Block,
New Delhi - 110 011.

... Respondents.

(By Advocate Shri V. D. Vadhavkar
for Shri M. I. Sethna).

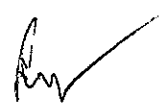
OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard Mr. R. Ramamurthy, the Learned Counsel for the applicant and Shri V.D. Vadhavkar for Shri M. I. Sethna, the Learned Counsel for the respondents.

2. The applicant was working as an Inspector of Central Excise and Customs. During 1986, he was sent on deputation to Central Bureau of Investigation. The applicant communicated adverse remarks for part of 1986 and part of 1987. The applicant made representation against the adverse remarks but the representation came to be rejected. The applicant was due for promotion in 1992. Applicant's junior came to be promoted on 04.03.1993. The applicant's grievance is that he should have been promoted on 04.03.1993 but the adverse remarks in the A.C.Rs. have come in the way of his promotion.

... 3



It is also now brought to our notice that applicant has since been promoted as Superintendent of Central Excise w.e.f. 17.10.1994 during the pendency of the O.A.

The applicant has taken number of grounds challenging the correctness and validity of the adverse remarks for the calendar year 1986 and 1987. He has approached this Tribunal for quashing the adverse remarks for the two calendar years 1986 and 1987 and seeks a direction to the respondents to promote him w.e.f. 04.03.1993 when his immediate junior Mr. G. S. Shinde, came to be promoted, with all consequential benefits.

3. The respondents in their reply have pleaded that the adverse remarks in 1986 and 1987 have come in the way of applicant's promotion. That the representations made by the applicant against the adverse remarks have been rejected. The respondents have justified the adverse remarks made in the A.C.Rs. and have taken a stand that no case is made out for expunging the adverse remarks or to grant any other relief asked for in the present O.A.

4. Both sides have referred to previous O.A. and proceedings taken in that O.A., namely - O.A.No. 852/88. That was an O.A. filed by the applicant challenging the adverse remarks but it is also stated that he had filed an appeal before the Central Board of Excise and Customs and that the Board has not disposed of the appeal. The O.A. came to be allowed by this Tribunal as per order dated 29.08.1991 when the O.A. came to be allowed with a



direction to the respondents to dispose of the applicant's appeal against the adverse remarks. It is also brought to our notice that applicant had filed a M.P. and C.P. in those proceedings and they came to be disposed of.

It is brought to our notice that the Central Board of Excise and Customs has rejected the applicant's appeal which strictly pertains to challenging the adverse remarks of 1986. The communication of the order of the Board to the applicant is exhibit 'D' which is dated 03.11.1993, in pursuance of the direction given by this Tribunal in the previous O.A.

5. As far as the adverse remarks for 1987 is concerned, the applicant had made a representation and it was rejected by the Joint Director of Central Bureau of Investigation on 13.07.1988 as per the copy of letter which is at page 59 of the Paper Book. The applicant has not brought out that there was any further appeal or further representation to higher officer in C.B.I. after 13.07.1988. Therefore, the order dated, 13.07.1988 has become final and it has not been challenged and is being challenged for the first time in the present O.A.

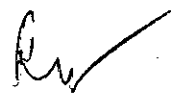
6. Now coming to the applicant's grievance about adverse remarks for 1986, we find the same at page 29. The adverse remarks communicated to the applicant are as follows :

"PART II : ASSESSMENT BY THE REPORTING OFFICER :

Item No. 11: (ii) Personality and manners :

"POOR"

...5




Item No. 22: OTHER OBSERVATIONS :

His overall performance remained to be judged but I find him unsuitable for CBI work and therefore may be reverted back to his parent department."

In our view, the remark about item no. 22 is not at all an adverse remark. It only says that applicant's performance are still to be judged but he is not suitable for C.B.I. work and, therefore, he may be reverted. Infact, the applicant himself was making representation for being sent back to Parent Department.

As far as the first remark is concerned, it is shown as 'POOR', which is certainly adverse in nature. But it is against the column - Personality and Manners. It is not about the actual work. We have perused the relevant column in the A.C.R. now produced by the Learned Counsel for the respondents where as far as performance of the applicant is concerned, the remarks are - "It is yet to be ascertained or judged." The reason is that the reporting period was very short. Though the applicant joined C.B.I. on 21.07.1986 and he was there till the end of the calendar year, namely - 31.12.1986. He was on leave for nearly three and a half months. It is on record that applicant's mother suffered paralytic attack and she died in November, 1986. Even in the confidential report the Reviewing Officer has made an *observation* report that applicant was under tension because of his mother's health. Therefore, the performance of the applicant was only for one and a half months and it was too short a time for forming any opinion. Therefore, there is no opinion formed by the Reporting Officer or Reviewing Officer regarding applicant's performance in the job. The observation 'poor' is only regarding his 'personality and manners' but even for this, the period was too



short, namely - one and a half months. We do not know as to what was the applicant's performance in the major part of the year in the Parent Department from 01.01.1986 till 20.07.1986. We secured the original A.C.R. but find that there is no A.C.R. written by the parent department for the major part of the year from 01.01.1986 to 20.07.1986.

In these circumstances and particularly, the period of reporting by the C.B.I. was only for a period of one and a half months and the observation is regarding personality and manners, and not about his performance in the work, we feel that the adverse remark 'Poor' should be expunged from the A.C.R. or should be ignored when considering the case of the applicant for the purpose of promotion. We also observe that the observations of the Reporting Officer against column no. 22 should ~~not~~ be allowed as "advisory in nature."

7. As far as adverse remarks for the calendar year 1987 is concerned, the applicant was in C.B.I. during that year from 01.01.1987 to 15.09.1987. The adverse remarks communicated to the applicant which are found at page 38 of the Paper Book reads as follows :

"His knowledge of law and procedure is not good enough. His investigative ability and ability to collect intelligence/information is below average. He did not take any interest in the C.B.I. work and had to be repatriated to his parent department."

Against this adverse remarks, the applicant made a representation and the competent authority by letter dated 13.07.1988 has

rejected the representation, which is at page 59 of the Paper Book. Here, the adverse remarks are not vague. They are given indicating the approach of the applicant or about the nature of his work. Further, in the order dated 13.07.1988 an indication is given that the observations are made as per the work done statement maintained in the office. Therefore, on merits, we cannot say whether the adverse remarks were justified or not justified. We are not sitting in appeal over the adverse remarks made by the officer. The adverse remarks show the opinion formed by the officer on the basis of the work done by the applicant and that is reflected in the work done statement. Therefore, in the facts and circumstances of the case, we do not find any ground to disturb the adverse remarks of the applicant in the year 1987 for the period from 01.01.1987 to 15.09.1987. In addition to this, we find that the adverse remarks have become final and it is too late in the O.A. filed in 1994 to challenge the adverse remarks of 1987. That remarks was not a subject matter of the previous O.A., as no appeal was pending at that time against the adverse remarks of 1987. The applicant has not filed any further appeal against the order of the Joint Director of C.B.I. Therefore, both on the ground of delay and also on merits, we are not inclined to interfere with the adverse remarks made against the applicant in the part of the A.C.R. for 1987 for the period from 01.01.1987 to 15.09.1987.

We also notice from the original A.C.R. that applicant has good report as far as remaining part of 1987 is concerned, which was in his parent department.

8. We have perused the original A.C.Rs. produced by the Learned Counsel for the respondents.

In the first D.P.C. held in 1992, applicant and two others could not be considered for want of A.C.Rs. Then those three officers, including applicant, were considered by D.P.C. on 16.07.1992 by circulation. On the basis of entries in the A.C.Rs., the applicant was found unfit and accordingly he was not promoted and his immediate Junior Mr. G.S. Shinde, was found fit for promotion. That is how the applicant did not get promotion in 1993 when the immediate junior of the applicant was promoted on 04.03.1993.

Subsequently, the applicant was again considered by the D.P.C. meeting held on 14.06.1993 and again because of the two adverse remarks, the applicant could not be promoted, though he had good reports in other orders.

In the next D.P.C. held in June, 1994, the applicant was cleared and he was found fit for promotion.

9. Since we have taken the view that the adverse remarks of 1986 should be ignored, now the department should hold a review D.P.C. and consider whether the applicant is fit for promotion on the basis of existing A.C.R. by ignoring the adverse remarks of 1986. The review D.P.C. to be held must be held as on 16.07.1992 and again as on 14.06.1993. If any of the D.P.C. find that applicant was suitable for promotion, then the applicant should be given promotion retrospectively from 04.03.1993 when his

immediate junior Mr. G.S. Shinde, got promotion. If however, on the basis of Review D.P.C. the applicant is found unfit for promotion, then the decision of the D.P.C. may be communicated to the applicant by the competent authority.

In case the applicant is found fit for promotion by the review D.P.C. of 1992 or 1993, then the applicant should get notional fixation of pay from the date his immediate junior was promoted with notional seniority from that date. We make it clear that applicant will not be entitled to any monetary benefits in case he is found fit for promotion by the D.P.C. till the date of his actual promotion, namely - 17.10.1994, on the basis of fixation of pay. He will be entitled to arrears from 17.10.1994 and onwards.

10. In the result, the application is partly allowed as follows :

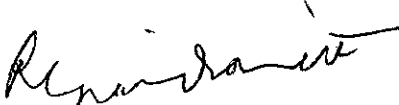
- (i) The adverse remarks of 1986 in the calendar year 1986 is ordered to be ignored for the purpose of promotion to the post of Superintendent of Excise.
- (ii) The competent authority should arrange to hold review D.P.C. in the light of the observations made above and pass appropriate orders according to law.



(iii) In the circumstances of the case, we grant four months time to the respondents, from the date of receipt of a copy of this order, to comply with the order of the Tribunal.

(iv) In the circumstances of the case, there will be no order as to costs.


(D. S. BANEJA)
MEMBER (A).


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*