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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 566/95 /199

Date of Decision: 12-9-1996

Anil G. Shakkarwar

Petitioner/s

Mr, M.S. Ramamurthy

Advocate for the
Petitioner/s

V/s.

U.C.I. & Ors.

Respondent/s

Shri
Shri Surekhkumar for M.I. Sethna

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

Hon'ble Shri

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. KOLHATKAR)
M(A)

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(1)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

pronounced, this the 12th day of September, 1996
CORAM

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Anil G. Shakkarwar,
Assistant Collector of Customs,
New Customs House,
Ballard Estate,
Bombay - 400 038.

By Advocate Shri M.S.Ramamurthy

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 011.
2. The Secretary,
Central Board of Excise &
Customs,
North Block,
New Delhi - 110 011.
3. Shri V.Ramu,
Deputy Collector (P&V)
Office of the Collector of
Central Excise,
121, Nungambakkam High Road,
Madras - 600 034.
4. Shri J.Ramkrishna(Retd.)
Principal Collector,
Central Excise,
Basheer Bagh,
Hyderabad 500 029.

By Advocate Shri Sureshkumar for
Mr. M.I.Sethna.

.. Respondents

ORDER

(Per M.R.Kolhatkar, Member(A))

In this O.A. the applicant has prayed for
in his ACR for the year 91-92
expunction of adverse remarks communicated to him
under letter dt. 14-8-92, Ex.'B', the representation
against which was rejected by communication dt.
22-6-1994 at Ex.'A'. The applicant has further
prayed for directing the respondents to upgrade
the grading of the applicant to "Very Good" or

...2/-

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"Outstanding" for the year 91-92 and to treat the grading "Good" for the year 91-92 or in any other year which will be brought under consideration by the Selection Committee for considering the applicant's promotion to the Junior Administrative Grade etc. equivalent to "Very Good" and grant consequential benefits.

2. The adverse remarks impugned are as below :

"As regards the resume of the officer, following are my comments:

- (a) the claim of the officer that 19 cases involving goods valued Rs.8.94 crores and duty of Rs.76.95 lakhs were booked in his division is at variance with the particulars furnished by him in the monthly technical reports of the Division which indicate that only 5 cases involving duty evation of Rs.1.39 lakhs were booked in 1991-92.
- (b) No inspection/visit notes have been received from the officer during the year 1991-92; and
- (c) Having inspected the Division, I do not agree with his claim that the division was administered almost in an ideal way.

2. In all other columns as well as general grading you have been rated as 'Good'. The reviewing Officer has also graded you as Good. "

3. The contention of the applicant in regard to remarks at (a) is that while giving the brief account of work it was stated that during the year of report, 19 cases were booked in the jurisdiction of Warangal division involving value of goods Rs.8.94 crores and duty of ...3/-

Rs.76.95 lakhs as compared to 28 cases booked during the year 1990-91 involving value of goods of Rs.1.94 crores and duty of Rs.36.00 lakhs. The applicant states that the details of 19 cases booked during 91-92 are maintained in 335 J Register at the Divisional Head Quarters of Central Excise Division, Warangal and details of ~~which are available at~~ page 52 which is part of the representation filed by the applicant. The respondents have not chosen to deal with this particular aspect of the matter in their written statement. They have merely stated that the representation was considered carefully and it was not felt necessary to make any modifications. This reply of the respondents is unsatisfactory especially when the applicant has given specific details. It was open to the respondents to controvert the same. However counsel for the respondents have made available ~~the corrected records for~~ ~~perusal of the Tribunal. I have perused the file and~~ I note that the material in this regard was available to the decision making authority. I am satisfied ~~on~~ ^{the} on the basis of material on record that ~~the~~ applicant has made out a good case for expunction of adverse remarks against item (a) and is entitled to relief atleast to that extent.

(4.) So far as adverse remarks against item (b) are concerned the contention of the applicant is that it is not clear that the Reporting Officer has checked up the record relating to the receipt of the Inspection Reports. According to him, the reporting officer has never brought to the notice of the officer reported upon that he has not received inspection/visit notes. The applicant submits that he left Warangal long back

and it is not possible for him at Bombay to verify the position regarding the despatch of inspection reports and acknowledgment of the inspection reports by the reporting officer. In my view the applicant has misconceived the correct procedure in this regard. The reporting officer is in a position to see the work of the officer reported upon on a day-to-day basis, both through personal contacts as well as through perusal/scrutiny of the reports and files submitted by the officer reported upon. It is not necessary for a reporting officer to make any verification as suggested by the applicant. When the applicant had stated that "the inspections of all the units in the jurisdiction of the Division paying annual revenue between Rs.1 crore and 5 crore were conducted during the year of report and that the inspections of the subordinate formations were conducted of O.A. vide p.84 then it is expected that the reporting officer in the normal course would have come across atleast some inspection reports both of the units as well as subordinate formations and it is inconceivable that all the reports submitted by the applicant got misplaced. The adverse remarks against Column (b) therefore do not require any interference.

(5) So far as adverse remarks against Cl.(c) are concerned the contention of the applicant is that he had got the Divisional Office record properly reconstructed, he ensured that no staff claims were allowed to remain pending, that all pension cases were settled in time, vigorous efforts were made to acquire land for the department at Waranjal, discipline was maintained the morale of the staff was always maintained very high, all the targets set for him were met and the division was administered in an ideal way. If the reporting officer chooses to vide page 85. 5/

it is contended that differ from this assessment he ought to have given reasons. Here again the contention of the applicant does not appear to be well conceived. Whether a division is run in an ideal manner or not is a matter of opinion and it is not necessary that a very high self appraisal by an officer should necessarily be agreed to by reporting officer. A reporting officer, who has an overall view of the working of the officer reported upon is entitled to hold that the division fell short of being administered in an almost ideal way. I, therefore, do not see any scope for interference with remarks at item (c).

6. The counsel for the applicant then submits that although in para (2) of the remarks communicated both the Reporting and Reviewing officer have graded him as Good, such grading though prima-facie not adverse effectively becomes adverse because the bench mark for consideration of officers for promotion to JAG is "Very Good" and the officer falling short of gradation may not be considered for promotion to JAG. The applicant further contends that he has come to know his overall assessment being "Good" for the year 91-92 because of existence of some adverse remarks in his confidential reports. But the possibility that his previous CR also contains the overall gradation of "Good" cannot be ruled out and therefore that gradation in effect would be adverse in the context of the bench mark of "Very Good" and therefore an appropriate direction as prayed for may be issued.

7. The applicant in this regard relies on the judgment of this Tribunal in K.P. Degai vs. U.O.I.

decided on 11-8-94 by a division bench which itself followed the earlier decision of the Tribunal in O.A. #25/92 in the case of Bhaktadas Roy which was a single bench decision delivered on 18-2-1993 wherein it was observed that the minimum bench mark for consideration of the promotion was "very good" and the ranking of the officer as "Good" was not enough. The "Good" remarks, it was held, has to be treated as adverse and had to be conveyed to the applicant. As against this the counsel for the respondents relies on the Full Bench decision in the case of V. Fallam Raju vs. U.O.I. & Ors., (1995) 31 ATC 361(FB) decided on 10-2-1995. In para 18 Full Bench held that "it is not the requirement of the principles of natural justice that a government servant who has been given an entry of "average" should be given notice of that entry so as to enable him to improve his performance so that his chances of promotion may improve." This implies that "average" entry is not to be treated as adverse and therefore the question of treating the entry "Good" as "Adverse" does not arise. I am inclined to agree with this contention.

8. The counsel for the applicant however relies on U.P.Jal Nigam & Ors. v. Prabhat Chandra Jain & Ors. JT 1996(1)SC 641. The issue considered here was whether downgrading of entry though not adverse still needed to be communicated to the employee. He particularly relies on the remarks "All the same the sting of aduerseness must, in all events, be not reflected in such variations..." According to the counsel for the applicant there is a sting of aduerseness even in the entry of Good. However, his reliance on U.P.Jal Nigam does not appear to help

the applicant because the question in Supreme Court judgment was regarding sting of adverseness as a result of downgrading. In the instant case there is no downgrading or variation. Therefore it does not follow that the remarks "Good" are required to be treated as adverse and communicated so far as previous years are concerned.

9. The counsel for the applicant then argues that to the extent application for expunction of some or all of the remarks is allowed then he is entitled to the relief of change of overall grading. For this purpose he refers to the analogy of the CR remarks in respect of a previous year which was communicated to him then but some of which remarks were expunged and as a result, overall grading was also changed. At page 117 is a communication dt. 14-9-89 in respect of CR for the year 88-89 and considering the representation dt. 6-11-1989 he was informed by letter dt. 12-9-1990 at page 120 that the grading "below average" has been modified. To this the respondents submit that so far as the CR for the year 88-89 was concerned there were a large number of adverse remarks which were expunged and this resulted in modification of the grading. In the present case this is not the situation. The applicant, however, relies on the judgment of this Tribunal in O.A. 556/91 delivered on 9-11-94 at Ex. 'M' page 155 Krishna Dnyanba Nandgave vs. U.C.I. In that case consequent on expunction of the remark which treated the officer as totally unsuitable for Govt. job, the department was directed to hold a review DPC for respective years and to judge the suitability of the officer for promotion on the basis that the expunged remarks were honest.

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10. I have already noted that there are three sets of adverse remarks in the CR of the officer for the year 91-92 and I am inclined to direct one set of remarks at item (a) to be expunged. The remarks at (b) and (c) are allowed to remain. I am, therefore, of the view that the ends of justice in this case would be met by directing the respondent No.2 viz. ~~the Commissioner of Excise and Customs A~~ Central Board of ~~Direct Taxes~~ to reconsider general assessment of the officer for the year 1991-92 on the basis that remarks at (a) are expunged and whether such expunction of the remarks requires upgrading of the general assessment of the officer. If it is requires upgrading respondents should take necessary action in this regard. The O.A. is disposed of in these terms with no order as to costs.

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M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

* *concurrent with order in*
R.P. 97/96, D/30-10-96.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO.6, PRESCOT RD, 4TH FLOOR..

MUMBAI - 400 001.

REVIEW PETITION NO. 97/96 in

ORIGINAL APPLICATION NO. 566/95.

DATED THIS 30th DAY OF OCT 1996.

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A).

Anil G Shakkawar,
Assistant Collector of Customs,
New Customs House,
Ballard Estate,
Bombay - 400 038.

... Applicant/Review
Petitioner.

v/s,

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 011.
2. The Secretary,
Central Board of Excise & Customs,
North Block,
New Delhi - 110 011.
3. Shri V. Ramu,
Deputy Collector (P & V),
Office of the Collector of
Central Excise,
121, Nungambakkam High Road,
Madras - 600 034.
4. Shri J. Ramakrishna (Retd)..
Principal Collector,
Central Excise,
Basheer Bagh,
Hyderabad - 500 029.

... Respondents.

ORDER

[Per Shri M.R. Kolhatkar Member (A)]

| In this Review Petition, the Review Petitioner/
Original Applicant has sought review of my judgement dated 12/9/96
in which partial relief was given namely adverse remarks in the

CR of the Officer for the year 1991-92 at item(a) to be expunged and others were allowed to remain.

2. The main contention of the Review Petitioner is that his prayer for expunction of Adverse Remarks in respect of items(b) and (c) has been turned down by the Tribunal on grounds which are based on imagination and speculation, that the Tribunal did not consider the ground of challenge that ~~mere~~ comments on the "resume" cannot be treated as Adverse Remarks and there is an error of law committed by the Tribunal in reading of the Full Bench decision in V.Pallamraju v/s. Union of India.

3. I have considered the grounds and I am of the view that the present review petition is in the nature of an appeal against the judgement impugning the legality or validity of the judgement and is not relatable to the review jurisdiction as contained in the rules under order 47 of CPC. The review petition is therefore not tenable and is therefore rejected.

4. However, in para-4(h) of the review petition, it has been pointed out that there is a minor typographical error in para-10 of the judgement, in that the respondent No.2 has been described as Central Board of Direct Taxes whereas the respondent No.2 is Central Board of Excise and Customs.

5. It is directed that the typographical error in para-10 of the judgement be corrected and a copy of the judgement so corrected should be sent to the parties.

The Review Petition therefore stands rejected except for the correction of typographical error mentioned in para-4 above.

abp.

M.R.KOLHATKAR
(M. R. KOLHATKAR)
MEMBER (A)

RP. No. 97/96
by this Union
22/10/

(17)

order/Judgement despatched
to Applicant/Respondent (s)
on 12/11/96

(S)
14/11/96

Received Criminal
Record (A'st) of
OA from Hon'ble
Supreme Court of
India on 25.3.2004

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