

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 945 of 1998.

Dated, this 23rd, the 23rd day of September, 1999.
Thursdays
Pushpa H. Kukreja

Pushpa H. Kukreja, Applicant.

Shri G. K. Masand, Advocate for the
applicant.

VERSUS

Union of India & Another, Respondents.

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

CORAM: Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ? Yes
(ii) Whether it needs to be circulated to other Benches
of the Tribunal ? No

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A)

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.:-- 945.98

Dated this Thursday the 23rd day of September, 1999.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Ms. Pushpa H. Kukreja,
Residing at -
B-12/8, M. G. Complex,
Sector XIV, Vashi,
New Mumbai.

Working as Tax Assistant
in the office of Assistant
Commissioner,
Adjudication Section (HQrs),
Central Excise, Mumbai-II,
9th Floor, Piramal Chambers,
Jijabhoi Lane, Lalbaug,
Parel, Mumbai - 400 012.

... **Applicant**

VERSUS

1. Union of India through
The Secretary in the
Ministry of Finance,
Department of Revenue,
New Delhi.

2. Deputy Commissioner (P & V),
Central Excise,
Mumbai -II, 9th floor,
Piramal Chamber,
Jijabhoi Lane, Lalbaug,
Parel, Mumbai - 400 012.

Respondents

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

ORDER

This is an application filed by Ms. Pushpa H. Kukreja, seeking the relief that the adverse remarks communicated to her vide letter dated 27.05.1997 (exhibit-A) be quashed and the respondents be directed to expunge the adverse remarks. She also

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seeks the setting aside of the communication dated 16.10.1997 to which the appeal filed by her on this matter has been rejected.

2. It may be stated here for easy reference that the adverse remarks communicated to her by exhibit-A read as below :

"PART-IV - REMARKS OF THE REVIEWING OFFICER :

COLUMN No. 12 : Do you agree with the remarks of the reporting officer. If not, indicate the extent of your disagreement. If you want to add anything specific with regard to the work and conduct of the official over and above, the remarks of the Reporting Officer, may please mention them. You may also sum up your view here.

ASSESSMENT BY : She is habitual late comer,

REVIEWING OFFICER remained absent most of the time.

COLUMN NO. 13 : Overall assessment of performance and qualities.

ASSESSMENT BY : Poor and Unfit for promotion."

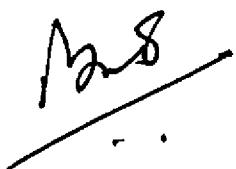
sd/- REVIEWING OFFICER

Bab

3.....After bringing out basic facts of the case, the applicant avers that she was regular in her duties and that whatever absence had occurred was fully accounted for, through properly sanctioned leave. She mentions that she was on maternity leave from 03.08.1995 to 02.11.1995 and thereafter asked for extension of leave till 04.08.1996, which was sanctioned vide communication dated 30.09.1996. She has given details of the periods of time when she was on leave for other personal reasons, and also mentioned that the reasons for availing of that leave was fully justifiable. In short, she states that after 04.08.1996, as explained above, she had to proceed on leave as follows :

06.08.1996 to 26.08.1996	...	Medical reason.
14.10.1996 to 17.10.1996	...	Medical reason.
20.10.1996 to 25.10.1996	...	Medical reason.
11.02.1997 to 19.02.1997	...	Sanctioned leave for brother's wedding.

4. The applicant states in her application that she was shocked at the adverse remarks received by her and for not only being declared as a late-comer but also for being assessed as 'poor and unfit for promotion'.

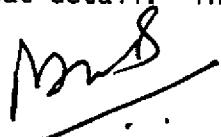


5. The respondents have filed a written statement where the generality of the allegations have been denied and parawise remarks offered. It is stated that apart from the periods where leave was sanctioned, the applicant had proceeded on leave without intimation for the period from 23.10.1996 to 25.10.1996. Also that there were complaints against her and a memo had been issued to her dated 29.10.1996. A letter, dated 06.11.1996, warning her not to commit the mistake of being on unauthorised absence again was also issued to her. It is stated that remarks regarding habitual late coming and absenteeism were based on the observations of the Reviewing Officer and were fully justified.

6. It is also stated that regularisation of leave cannot be said to ignore the fact that absence was not unauthorised initially. It is further stated that the representation of the applicant has not been dealt with in a mechanical manner but decided after careful consideration of all evidence and record of the facts of the case.

7. I have seen all papers in the case, including annexures and have heard the Learned Counsel on behalf of both sides.

8. The Learned Counsel for the applicant argued the case in great detail. The points made by him are recorded below in gist:

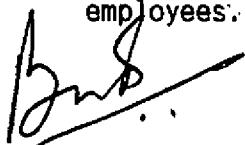


(a) The Learned Counsel took us over the exhibits 'A' and 'B', and, also, other annexures and stated that no record was taken into consideration by the respondents for rejecting her representation and urged the Tribunal to go into this aspect. In this connection, he took us over the points made by the applicant in her representation and appeal dated 30.06.1997.

(b) It was contended that the rejection of representation was cryptic and even alleged that it should be checked up whether the Deputy Commissioner who had disposed of the representation was himself the authority who had written the adverse remarks.

(c) The Learned Counsel reiterated the fact maternity leave was a strong ground for absence, as also the reason elaborately described in the application for other periods of leave. He averred that it can by no means be called habitual absence, and that too by a Reviewing Officer.

(d) The applicant's record, for prior and later years is totally positive. Such adverse entries would show distress signal to the other women employees.



(e) It was argued that the relief sought is very important in as much as the promotion of the applicant, which would get affected.

9. Arguing the case on behalf of respondents, their counsel stated that, in the first place, the request made would have to be considered on the basis of hard facts and not on any sympathy. He took me over pages 32 and 33, which are the Annexures to the reply statement, and indicated that warnings had been given, for unauthorised absence, to the applicant vide these two memos. The counsel for respondents specially drew my attention to para 4 of his reply, stating that the applicant proceeded on leave without prior intimation between 23.10.96 to 25.10.1996. Further, it was averred that the applicant has accepted the fact that she had to often come late in view of the fact that she had to go to the creche, etc. before coming to the office. It was also stated that it was not correct, as pointed out by the Counsel for applicant, that the Deputy Commissioner is the Reviewing Officer. The Deputy Commissioner is the officer who decided the appeal; hence, there was no violation of the principles of natural justice. It was further argued that bias and malafide, as alleged, had ^{no BnB} basis whatsoever. No officer has been made a party by name for a proper allegation of malafide, and in any case, this allegation of bias is totally unfounded and unjustified.

10. Re-arguing the case, the Learned Counsel for the applicant stated that since leave has been granted after warning, these warnings should not have independent effect and in any case, no leave was taken after the warning was given to the applicant, apart from one occasion, i.e. for brother's marriage. Hence, the adverse entry to the effect that applicant was a habitual late comer was not correct.

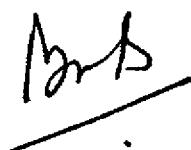
11. The Learned Counsel for the respondents produced before us the original record in two files, namely - the C. R. Dossiers of Ms. Pushpa, as also the file on which the representation has been considered:

12. It is to be noted that the adverse remarks communicated contain two distinct elements. The first one relates to the remarks that the applicant is a habitual late comer and remained absent much of the time. The second one is contained in column 13 i.e. under the title of 'Overall Assessment and Performance and Qualities'. Here the remark made is 'Poor and Unfit for promotion'. In regard to the first remark i.e. under column no. 12, it is to be seen that the remark has not come out of the blues, and that there has been a warning about late coming and of proceeding on leave without permission. I have seen the record in the case and find that though much of the period is covered by leave, there is definite record that the applicant has been coming late on times. Also, on one occasion, atleast, the application for leave was not given in time and regularised only later. It cannot be said that the remarks are made without basis.

Abd

13. It is also seen in the file relating to representation that the Senior Officers, while going through the representation, have gone into the records and it is not as though the remark has been casually made or overlooked while dealing with the representation of the applicant. It is well established that this Tribunal cannot go through the request for quashing of adverse remarks in the same manner as an Appellate Authority can, and given the points made above, it would not justify the quashing of this part of the remark, by the Tribunal. It has also been accepted at some place that she had to come late at times for reasons explained. There is no doubt that reasons explained may have some merit in that the applicant had to attend to justifiable family responsibilities, which are the priority for a person placed as the applicant is. However, this cannot be the basis for the Tribunal ordering expunction of the adverse remarks in view of the settled law by the Highest Court to the effect that this Tribunal should not sit in judicial analysis easily in such matters, unless remarks were arbitrary, etc. Here the remarks cannot be said to be arbitrary.

14. Now coming to the second part of the adverse remarks, it is seen that they stand on a somewhat different footing, and upon careful consideration of all the arguments made on both sides, the records in the case and the original records produced before us, these remarks can justifiably ordered to be quashed.



15. The substantial part of the confidential report for 1996-97 which relates to seven months working under Reviewing Officer shows that the official comes out as a good Official according to the initiating authority. Now it is totally well accepted, and is being accepted in this case also, that the Reviewing Officer has full authority to disagree with the initiating officer. However, in the facts and circumstances here, the adverse remarks given in column no. 13 i.e. 'Overall Assistance of Performance and Qualities' differs from the remarks of the initiating officer without assigning any reason for the difference of opinion. It would stand to reason and it would be incumbent upon the Reviewing Officer that he records the reasons where he differs from the initiating officer's report. Now it is clear that nowhere in the report of Initiating Officer is such a remark given which could justify the overall ~~assessment~~^{Brb} of performance as being graded 'poor'. While the late coming referred to above may be acceptable, this cannot mean that the overall ~~assessment~~^{Brb} can be declared as 'poor' without assigning any reason. Similarly, on the same reasoning the remark "unit for promotion" is totally unjustified and arbitrary in as much as no reasons are assigned. It can be said that it is totally arbitrary. It is also to be noted that this general remarks of Overall performance i.e. Unfit for promotion, can do long term harm in restricting her promotion, and thus wash of good work done in the previous years.

16. It may be mentioned here that a point was raised by the Learned Counsel for the respondents that the order disposing of

the representation of the applicant was cryptic. The file relating to the subject was carefully gone through by me and I find that there is no reason to doubt the proper application of mind while considering and disposing of the representation. The respondents cannot be faulted on this count.

17. In view of the detailed discussions made above, the application is partly allowed in terms of the orders as follows :

The adverse remarks made in the confidential report of the applicant, Ms. Pushpa H. Kukreja, for the year 1996-97, and communicated to her vide confidential letter dated 27.05.1997 is ordered to be quashed to the limited extent as below :

The adverse remarks made at column no. 13 i.e. "Poor and Unfit for Promotion" are ordered to be set aside and expunged. There will be no interference in regard to adverse remarks at contained at column no. 12. Respondents will take necessary action for expunging the remark at column no. 13, as ordered above, from her record.

18. There will be no order as to costs.

B. N. Bahadur
(B. N. BAHADUR) 23/9/98.

MEMBER (A)