

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 04.12.02

OA No.162/01

Nathu Lal Gehlot s/o Shri Jai Ram Gehlot, age 58 years, working as Superintendent, Central Excise Department, Jaipur r/o 480, Barkat Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Govt. of India, New Delhi.
2. The Commissioner, Central Excise-I, Central Revenue Building, C-Scheme, Jaipur

.. Respondents

Mr. Balvinder Singh - counsel for the applicant

Mr. P.C. Sharma, proxy counsel to Mr. Sanjay Pareek, counsel for the respondents

CORAM:

Hon'ble Mr. H.O.Gupta, Member (Administrative)

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the order dated 1.10.99 (Ann.A1) whereby adverse remarks in the ACR for the financial year 1998-99 were communicated to him and the order dated 25.1.2000 (Ann.A3) whereby his representation against the adverse remarks was rejected and also the order dated 9.8.2000 (Ann.A5) whereby his second appeal has not been entertained. In relief, he has

12

prayed for quashing the said orders and for grant of further promotion to the applicant with benefits.

2. The case of the applicant as made out, in brief, is that:-

2.1 He entered in the service as LDC in July, 1963. He was promoted as UDC in 1971 and thereafter, in 1975, he was directly recruited as Inspector. In 1982, he was promoted to the selection grade of the post of Inspector. He was further promoted as Superintendent in June, 1990. He has been discharging the duties of Superintendent with full satisfaction of his superiors and without any complaint.

2.2 While working as Superintendent, he was communicated adverse remarks in the ACR for the period 1.4.98 to 31.3.99 vide the impugned letter dated 1.10.99 (Ann.A1). He made detailed representation dated 26.10.99 (Ann.A2) which was rejected vide order dated 25.1.2000 (Ann.A3) without giving him the opportunity of hearing and also without considering the facts and grounds of his representation against the adverse remarks. His representation was disposed of with non-speaking order. Aggrieved by this order, he made second appeal to the Chairman, Board of Central Excise and Customs, New Delhi on 14th March, 2000 (Ann.A4) but the same was also rejected vide order dated 9.8.2000 (Ann.A5) by a non-speaking order stating therein that there is no scope for consideration of second appeal.

3. The main grounds taken by the applicant are that :

3.1 The respondents did not consider various grounds made in his representation.

3.2 He was not given any opportunity of personal hearing.

3.3 His representation was rejected without speaking order.

3.4 He was not given any show-cause notice against any complaint or any warning in whole of his service career but within a span of four months at Ajmer as Superintendent, he has been punished without any reason.

3.5 While submitting his representation, he had informed the authorities that the adverse remarks has been given by the authority only to harass the applicant without any reason as in his total service tenure there had been not a single adverse remark. The same higher authority had given him an appreciation letter in 1996-97 stating that his work was excellent. In the previous year 1997-98, he had collected record revenue by way of booking seizure/offence in the field to curb the leakage of revenue of Rs. 2,84,68,000/- and in 1996-97, he made seizure of 49 cases and collected revenue of Rs. 32,04,000/-.

4. The respondents have contested this applicant. Briefly stated, they have submitted that:-

4.1 The service of the applicant was not satisfactory. He was awarded adverse remarks for the year 1998-99. Moreover, he has not been having outstanding service record throughout his service career. Although he has been given appreciation letter dated 24.3.97 (Ann.R1) for his performance during the year 1996, the said letter

B

has nothing to do with his performance during the subsequent years. The ACR of 1998-99 was written on the basis of the performance during the reporting period only. Past record is not relevant in this case of particular year.

4.2 In his representation, the applicant had not submitted sufficient grounds which can prove that the reporting officer had awarded the remarks with a view to harass the applicant. On receipt of representation of the applicant, the same was sent to the reporting officer for his comments. The reporting officer while submitting his comments, vide his letter dated 6.12.99, had intimated the instances and provided documents which substantiated the remarks awarded by him in the ACR of the applicant. In his representation dated 26.10.99, the applicant had not submitted any ground to prove the alleged bias of the reporting officer. 'Very Good' or 'Excellent' ACR awarded by the reporting officer in the past years are not relevant in the matter because for the performance of the past period, an ACR has already been written. Even excellent performance during the past period does not make some one eligible for excellent ACR for the period in which his performance has been judged as adverse. As per the extant instructions (Ann.R6) there is no provision to give opportunity of hearing.

4.3 The second appeal addressed to the Chairman, Board of Central Excise and Customs was disposed of in accordance with the rules. As per DOPT instructions contained in the OM dated 30.1.78 only one representation is allowed against adverse remarks and his representation is to be disposed of by such competent authority as

prescribed in the OM dated 20.5.1972. There is no provision for the Government servant to make further representation to any superior authority against the decision of the competent authority. Since his representation to the Chairman, Board of Central Excise and Customs cannot be termed as a petition/memorial to the President in accordance with the existing instructions on the subject and no second appeal is permissible in terms of DOPT instructions, the applicant was at liberty to approach the President of India, but he did not do so. Copies of the relevant circular/OM are enclosed as Anns.R7, R8 and R9.

4.4 The performance of the applicant during the period 1.4.98 to 31.3.99 was not satisfactory and up to the mark and, therefore, he was rightly communicated adverse entries for the said period. The applicant has not submitted any document which shows that the reporting officer was biased. The reporting officer gave his report according to the performance of the applicant. The applicant has not exhausted the remedies available to him. He should have filed memorial/petition to the President of India within six months of receipt of order dated 25.1.2000. The impugned order dated 1.10.99 was passed according to the performance of the applicant and as per rules and regulations existing on the subject.

5. Briefly stated, the applicant in rejoinder has submitted that :-

5.1 He was promoted to the post of Superintendent in the year 1990 and till 1.4.98 there was no adverse remarks against the him and the reporting officer within a

B

period of 8 months has endorsed the adverse remarks against the applicant without applying his mind and without considering the past performance of the applicant. The reporting officer has never given any show cause notice or any type of letter to the applicant that his work was not up to the mark or there was any negligence but has suddenly endorsed the adverse remarks after the end of the year.

5.2 The reporting officer has not assigned the target to the applicant to complete the work during the said period and no corrective steps have been advised to complete any target or goal by the applicant by way of remarks in the daily diary submitted by the applicant in respect of performance of work done.

5.3 The respondents have not produced any document with the reply based on which the adverse remarks were given in the ACR. The performance appraisal by way of confidential report should be used as a tool with an objective to develop the officer. It is not meant to be a fault finding process but a developmental one.

5.4 As per rule 16(2) of the Confidential Report, personal hearing is required to be given which has been denied to the applicant. The second appeal was filed before the Chairman, Board of Central Excise and Customs in accordance with the DOPT OM dated 30.1.78 as clarified vide letter dated 4.1.95. The condition for restricting the second appeal is only in respect of Group-C and D employees whereas the applicant is Group-B employee.

6. Heard the learned counsel for the parties and perused the record including the ACRs of the applicant for



the period from 1991-92 till 1998-99.

6.1 In spite of specific order for production of any advice/warning or any other note to the applicant for improving the performance during the period 1.4.98 to 31.3.99, the respondents could not produce such document. In fact, during the course of argument, the learned counsel for the respondents fairly conceded that no advice or warning or any other note was given during the period to which the adverse report pertains.

6.2 On perusal of the ACRs of the applicant produced, it is seen that no adverse remarks were recorded for the ACRs of 1991-92 to 1997-98. In the said ACRs, the applicant has been overall assessed as 'Very Good' or 'Good'. It is only in the ACR of 1998-99 that adverse remarks were given. The adverse remarks as communicated to the applicant vide the impugned order dated 1.10.99 are as under:-

"PART-III"

(1) QUALITY OF WORK:

"No significant ability in analysing the case records with reference to law and procedures was shown by the officer".

(2) PROMPTNESS IN ATTENDING TO WORK:

"Needs reminders for completion of work allotted to him. The officer was incharge of AF Branch but the cases were not completed quickly."

(3) INDUSTRY AND CONSCIENTIOUSNESS:

"Takes the work casually"

(4) EXECUTIVE ABILITY DISPLAYED:

"Lacking leadership and hardly any

*B*

information was collected and discussed by the officer during my tenure as Assistant Commissioner, Ajmer. Never come up with any suggestion for Anti-Evasion work."

(5) QUALITY OF INSPECTIONS:

"The officer has not shown his worth in inspecting the documents seized from the assessees. Not able to scrutinize the records maintained by the units".

7(a) Other observations, if any:

"Has not shown his worth in gathering information or in having liaison with other officers"

7(b) Special aptitude:

"Not shown any special aptitude anywhere"."

6.3 It is not denied by the respondents that earlier to the report of 1998-99, no adverse remarks was communicated to the applicant. It is also not denied that the performance of the applicant earlier was satisfactory. In fact, the respondents themselves have annexed an appreciation letter dated 24th February, 97 (Ann.R1) issued by the Commissioner wherein performance of the applicant pertaining to the duties and the responsibilities during the year 1996 has been appreciated. In the impugned order dated 25.1.2000 (Ann.A3), whereby his representation was rejected, no reasons for rejection on the point raised by the applicant in his representation has been mentioned. The remarks under column 7(b) relating to special aptitude can not be

treated as adverse remarks.

6.4 It is also seen from the ACR in question that most of the columns contain adverse remarks with grading as "Just adequate" (average) whereas the reviewing officer has overall assessed his performance and qualities as "Good" - a grading which is sufficient to promote the applicant to the next higher grade being the Benchmark. There is no remark of the reviewing officer from where it could be seen that he had agreed with any remarks of the reporting officer. Further in Part-II of the report, containing evaluation of the work done by the applicant, the reporting officer has written that the applicant was not able to impart necessary guidance to the staff working under him. It is the contribution of Inspectors which has resulted in cases. The cases booked are of routine seizure of excess good only. Whereas the remarks of the reviewing officer, on this Part-II seeking whether he agrees with the reporting officer or not, are "He needs to be placed in the category - Good". As per rules the adverse remarks are required to be communicated by the reviewing officer. With such comments/remarks of the reviewing officer, the adverse remarks as given by the reporting officer, are no more valid and, thereofre, we are unable to appreciate why the same were communicated to the applicant.

6.5 The Confidential Report is an important document which provides the basic and vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the reporting authority, the reviewing authority and the accepting authority are required to perform the duty of filling out the form with a high sence

of responsibility. Performance appraisal though Confidential Reports is required to be used as a tool for human resource development. The objective is to develop an officer so that he/she realises his/her true potential. It is not meant to be a fault-finding process but a developmental one. The Performance appraisal has to be joint exercise of the officer reported upon and the reporting officer. Being a tool for development, the reporting officer and the officer reported upon should meet during the year at regular intervals to review the performance and to take necessary corrective steps. The confidential reports are the basic documents to assess the performance of an employee. These serve as an important input for promotion, deputation, continuation in service beyond a particular age/years of service, confirmation, crossing of Efficiency Bar etc. Adverse remarks in the ACR of an employee would be to his prejudice in the advancement of his career. The adverse remarks which find place in the ACR at the end of the year, without giving the employee opportunity to improve by providing appropriate feedback and guidance to correct the deficiency with the object of developing the officer would also <sup>not</sup> ~~serve~~ the interests of the employer.

6.6 In the case of State of UP vs. Yamuna Shanker Misra and another, JT 1997 (4) SC, the Apex Court has held that :-

"Before forming an opinion to make adverse entries in confidential reports, the reporting/reviewing officer should share the information which is not part of the record

*B*

with the officer concerned."

The Hon'ble Apex Court has further held in the aforesaid case that -

" The object of writing the Confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence. Article 51-A (j) enjoins upon every citizen, the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of performance of the subordinate officer. It should be founded upon facts and circumstances."

In State Bank of India and ors. v. Kashinath Kher and Ors., (1996 (8) SCC 762) and Sukhdeo v. Commissioner, Amravati Division, Amravati and ors., (1996 SCC (L&S) 1141), the Hon'ble Apex Court has held that :-

"The Controlling officer while writing confidential reports should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's

B

devotion to duty, honesty and integrity so as to improve excellence of the individual officers, lest the officer gets demoralised which would be deleterious to the efficiency and efficacy of the public service."

"He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospects and service were in jeopardy. It would be salutary that the Controlling Officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of his deficiency he noticed, for improvement. Inspite of the opportunity given, if the officer/employee does not improve, then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had been given prior opportunity for improvement and yet was not availed of so that it would form part of the record."

The respondents could not produce any document/record to establish that the reporting officer had at any time informed the applicant about his shortcomings to improve his performance, before writing the adverse remarks at the end of the year. The respondents have also not produced any letter or advice note or any other document to establish that the applicant was cautioned or warned or reprimanded at any time during the reporting period. There is also no mention by the

12

: 13 :

reporting officer that the applicant was given prior opportunity to improve before endorsing the adverse remarks. There is also nothing in the said ACR to support the adverse remarks by any other fact or record. The applicant was denied the opportunity of improvement before endorsing the adverse remarks. The reporting officer has failed to appreciate the object of writing the ACR. Keeping in view the law laid down by the Hon'ble Apex Court, we are of the firm view that the adverse remarks suddenly entered at the end of the year cannot sustain.

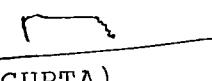
7. In view of above discussions, the impugned orders dated 1.10.99 (Ann.A1) and 25.1.2000 (Ann.A3) are quashed. Keeping in view the facts of the case, it would be in the interest of justice, if the respondents are directed to treat the ACR for the year 1998-99 as having been not written. Accordingly, so directed. The respondents are further directed to grant such other consequential benefits as may be due to him under the rules within six months from today.

8. No order as to costs.

9. Let the Deputy Registrar send a copy of this order to the Chairman, Central Board of Excise and Customs North Block, New Delhi - 11, <sup>B</sup> for such corrective action as may be necessary to avoid litigation in such cases.

  
(M.L.CHAUHAN)

Member (J)

  
(H.O.GUPTA)

Member (A)