

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 336 of 2004

Indore this the 17th day of November, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

K.M. Patwari, Presently working as
Deputy Commissioner of Central Excise
(Technical) Headquarters, Indore,
Manik Bagh Palace, P.B. No. 10,
Indore 452 001, and residing at
Quarter No. 1. Type V Quarters, Central
Excise Officers' Colony, Residency Area,
Near Daly College, Indore, MP.

.... Applicant

(By Advocate – Smt. B. Vyas)

V e r s u s

1. Union of India, through the Secretary,
Department of Revenue, Government
of India, North Block, New Delhi-110 001.
2. The Commissioner of Customs & Central
Excise, Manek Bagh Palace, Indore-
452 001 (Madhya Pradesh).
3. Chief Commissioner of Customs & Central
Excise, Madhya Pradesh and Chhattisgarh
State, Opp. Maida Mills, Hoshangabad Road,
Bhopal – 462 011, MP.

.... Respondents

(By Advocate – Shri S.A. Dharmadhikari)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

“(a) to hold and declare that the retention of the adverse remarks in the ACR of the applicant for the period from 31.12.2001 to

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31.03.2002 under the heading "Quality of Inspection" and "General Assessment" are bad in law and liable to be expunged,

- (b) to direct the respondent to expunge the adverse remarks in the ACR of the applicant under the heading "Quality of Inspections" and "General Assessment" for the period from 13.12.2001 to 31.3.2002,
- (c) to further direct the respondents to review the grading given to the applicant for the reporting period 2001-02 after expunging of the adverse remarks in terms of prayer (b) above,
- (d) to further direct the respondents to ignore the adverse remarks against the two heads "Quality of Inspection" and "General Assessment" covering a short period of three months and restore the ACR on the basis of the period 01.04.2001 to 12.12.2001,
- (e) to quash and set aside the order dated 9.4.2003 (Annexure A-1) and order dated 24.12.2003/12.1.2004 (Annexure A-2) passed by the respondents."

2. The brief facts of the case are that the applicant is presently working as Deputy Commissioner in the Central Excise Commissionerate at Indore. He received a communication dated 13.9.2002 from respondent No. 2 communicating adverse remarks to him in the ACR from the period from 13.12.2001 to 31.3.2002 i.e. for a period of three and a half months. The said adverse remarks were given under four heads i.e. (i) quality of work and output, (ii) quality of inspections, (iii) executive abilities and (iv) general assessment. The applicant submitted representation to the Chief Commissioner and pointed out in detail as to why the said comments communicated as adverse remarks be expunged. The application was rejected by the Chief commissioner vide order dated 9.4.2003 which was communicated to the applicant vide letter dated 17.4.2003. The applicant preferred a memorial to the President of India on 16.6.2003 and also sought for personal hearing before taking any decision on the said memorial. The said memorial of the applicant was partly allowed by the competent authority and the adverse remarks under item No. (i) quality of work and output and item No. (iii) executive abilities were ordered to be expunged but the remarks in respect of other two



heads were retained by the competent authority. The general instructions for writing of confidential reports have not been properly followed. It is not possible that for the period from 1.4.2001 till 12.12.2001 the applicant has no adverse remarks against his working and suddenly in the last 3 months the said adverse remarks communicated, a very serious fall in standards for the applicant, which cannot be accepted in the absence of proper material to justify the said adverse remarks. Hence, this Original Application is filed.

3. In reply the learned counsel for the respondents contended that there is no provision to afford opportunity of personal hearing to the officer reported upon before taking a decision on his representation by the competent authority. It is also false that the general instructions for writing the confidential report were not properly followed. The remarks whether advisory or adverse requiring the official to improve his performance in the subsequent years are required to be communicated. However, the contention of the applicant that the adverse remarks under the heads of quality of inspection and general assessment cannot be treated to be adverse remarks and, therefore, expunged is totally baseless and self explanatory in as much as if the same are not treated as adverse, the question of expunging them does not arise. It is further argued that considering the particular remark as adverse the officer is communicated the same and is also given the opportunity to represent against the same. The Chief Commissioner has duly considered the representation of the applicant and taking note of the over all performance of the applicant passed the order indicating the reasons upon which the order is based. The applicant is not entitled for any relief whatsoever. Hence, the action of the respondents is perfectly legal and justified and the OA deserves to be dismissed.

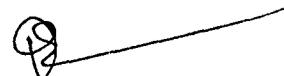
4. Heard the learned counsel for the parties and carefully perused the pleadings and records.



5. It is argued on behalf of the applicant that the applicant received the communication dated 13.9.2002 with regard to the adverse remark recorded since 13.12.2001 to 31.3.2002 i.e. for the period of 3 and a half months, after recording the adverse remark and not prior. During the said period the work, conduct and integrity of the applicant was not adverse at all. It is further argued on behalf of the applicant that before forming an opinion to be adverse it was the duty of the reporting officer writing confidentials to share the information which is not a part of the record with the officer concerned, so that the officer can improve himself. As per instructions, the reporting officer is required to bring to the notice of the employee about the shortcomings during the period of reporting and such short coming observed by the reporting officer should be communicated to the employee in writing. Our attention is drawn towards the judgment of the Hon'ble Supreme Court in the case of State of UP Vs. Yamuna Shankar Mishra, 1997(4) SCC 7. Hence, the respondents have not followed the mandatory procedures while awarding the adverse remarks to the applicant.

6. On the other hand the learned counsel for the respondents argued that the applicant was given oral intimation on several times. Thus they have followed the instructions given by the higher authorities from time to time and the impugned orders are passed after due consideration and representations of the applicant. The applicant was given due opportunity of hearing before passing the impugned orders. Hence, this OA is liable to be dismissed.

7. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records we find that the Hon'ble Supreme Court in the case of Yamuna Shankar Mishra (supra) has held that "before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the



officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officers the errors of the judgment, conduct, behavior, integrity or conduct/corrupt proclivity". The respondents could not show us any document by which the applicant was noticed about his short comings observed by the reporting officer. We have also perused the order dated 3rd September, 2004 passed in OA No. 381/1999 – M. Krishna Kumar Vs. Union of India in which the Jabalpur Bench of the Tribunal has taken into account the aforesaid judgment of the Hon'ble Supreme in the case of Yamuna Shankar Mishra (supra). In the OA No. 381/1999 the Tribunal has also discussed about the OA No. 188/2001 dated 13th February, 2004 decided by this Bench of the Tribunal.

8. Considering all the facts and circumstances of the case we are of the considered view that the respondents have not followed the procedure as stated in the aforesaid order of the Hon'ble Supreme Court. Thus, we quash and set aside the adverse remarks communicated to the applicant for the period from 31.12.2001 to 31.03.2002. Accordingly, the Original Application stands disposed of. No costs.

**(Madan Mohan)
Judicial Member**

mPS
(M.P. Singh)
Vice Chairman

Feb 26th 1911