

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH.

CIRCUIT CAMP AT BILASPUR

Original Application No. 128 of 2002

Jabalpur, this the 5th day of ~~October~~, 2004

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

R.M. Mishra.
S/o Sri S. Mishra,
Aged about 43 years,
Superintendent. Central Excise.
Range Korba, Balco Korba

APPLICANT

(By Advocate - None)

VERSUS

1. Union of India,
Through The Secretary
Government of India,
Ministry of Finance, New Delhi.
2. Chief Commissioner,
Central Excise,
New Central Revenue Building
"C" Scheme, Statute Circle,
Jaipur.
3. Commissioner,
Central Excise, Civil
Lines, Raipur.
4. Commissioner,
Central Excise, Manik Bagh
Palace Indore.

RESPONDENTS

(By Advocate - Shri K.N.Pethia)

ORDER

By Madan Mohan, Judicial Member -

None is present on behalf of the applicant. Since it is an old matter of the year 2002, we dispose of this ~~OA~~ by invoking the provisions of Rule 15 of the CAT(Procedure) Rules, 1987.

2. By filing this ~~OA~~ the applicant has sought the following main reliefs :-

- "a) quash the impugned order dt.18.7.2001 Annexure-A-1
- b) direct that the adverse remarks in the ACR of the applicant for the period from 1.4.1999 to 31.3.2000 be expunged."



3. The brief facts of the case are that the applicant was initially appointed as Inspector in the Central Excise Department w.e.f. 29.4.1982. He was promoted as Superintendent Central Excise, W.e.f. 25.1.1999 and was given a reward of Rs.17,000/- for seizing silver in the year 1994. Since six Inspectors were working under the supervision of the applicant 4 in Headquarter at Korba and 2 at isolated Sectors. Shri K.Leelanand Inspector who was posted in the Sector Ambikapur at distance of about 200 K.M. from Korba HQ office had been absenting from duty without any information. There was no telephone provided in the Sector Office Ambikapur. The applicant called for explanation from Shri K.Leelanand vide order dated 19.4.99, 6.8.99, 24.8.99, 19.1.2000, 8.3.2000, 16.3.2000, 28.4.2000, 22.5.2000 and 22.5.2000 (Annexures-A-2 to A-10). Thereafter the applicant recommended to the Asstt. Commissioner Central Excise, Bilaspur, vide letters dt. 5.8.99, 8.12.99 and 14.1.2000 to stop payment of his salary. But the Assistant Commissioner, Bilaspur did not take any action against Shri K.Leelanand. The joint Commissioner(P&V), Central Excise, vide his letter dated 31.1.2001(Annexure-A-14) intimated the applicant that the applicant's confidential report for the period from 1.4.99 to 31.3.2000 contained the following adverse remarks:-

"The overall assessment is just adequate,

Part III Col No.04	Executive abilities displayed
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He could not control Staff properly,

Poor"


Other remarks had not been communicated to him. The applicant was unable to understand on which grounds such adverse remarks were made. The applicant submitted a representation dated 4.4.2001(Annexure-A-17) and the same was rejected vide order dated 18.7.2001(Annexure-A-1) by the Commissioner Central Excise, Raipur. He again



submitted a representation dated 22.11.2001(Annexure-A-18). But ~~he~~ he was intimated that only one representation is allowed against the adverse remarks. Once a representation on adverse remarks has been rjected, an appeal/memorial can be submitted to the President. Hence, this OA.

4. Heard the learned counsel for the respondents and perused the material available on records.

5. It is argued on behalf of the respondents that the adverse remark in the ACR of the applicant as recorded was communicated to him in full. The applicant was awarded "Poor" remarks in his ACR as he could not control his staff properly. This remark was also confirmed by the reviewing officer, as one of the Inspectors posted under the supervisory control of the applicant had remained absent from duty for a long period without intimation and he failed to initiate any suitable action against him. The representation of the applicant against his adverse remark had also been suitably considered by the Commissioner vide order dated 18.7.2001 and thereafter it was rejected. The learned counsel for the respondents further argued that the applicant has himself admitted that there was no telephone facility in Sector office at Ambikapur, ~~that~~ ^{he} he failed to ascertain the presence of the Inspector at Sector office. Thus the applicant ~~failed~~ ^{have} failed to understand that an efficient officer could ~~very well controlled~~ ^{have} over his lower staff even without telephone ~~away~~ from his place of posting. Hence the applicant himself accepted his supervisory failure over his staff posted away from his office. The learned counsel for the respondents has also argued that the applicant had written 9 letters to his subordinate staff calling reports, yet he did not receive any report and it also showed that the applicant was well aware of his shortcomings. Hence, the order passed by the respondents was perfectly legal and justified.



6. After hearing the learned counsel for the respondents and careful perusal of the records, we find that while giving the adverse remarks in the ACR of the applicant for the year 1999-2000, the respondents did not intimate the applicant about his shortcomings so that he may improve himself. It was mandatory requirement for the respondents to intimate the adverse remarks to the applicant, ^{before} which they have not done/giving adverse remarks to the applicant. We have perused the adverse remarks which is not a reasoned ^{for from} and rather vague in nature. The applicant had called/ Shri K.Leelanand his explanation vide Annexures-A-2 to A-10 and he also informed the Assistant Commissioner vide his letters dated 5.3.99, 8.12.99 and 14.1.2000 to stop payment of his subordinate Shri K.Leelanand for the months of August 1999, December, 1999 and January, 2000. But he did not submit his explanation. It shows that the applicant made efforts to improve his performance to his duties with due diligence, and to have an effective control over his subordinates as he had informed his senior officer for taking action against his subordinate to whom he had written several letters calling for report and explanation Annexures A-2 to Annexure-A-10. We have found in para 5.8 of the OA, the Government of India, Cabinet Secretariat Department of Personnel, New Delhi has issued memorandum dated 20.3.1972 following direction with regard to ACRs which has been as under :-

"8.1 It is necessary that every employee should know what his defects are and how he could remove them. Past experience suggests that it would make for better efficiency and contentment of public service if every reporting officer realizes that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to give him at all time the necessary advice, guidance and assistance to correct his faults and deficiencies. If this part of the reporting officer's duty is properly performed, there should be no difficulty about recording adverse entries which would only refer to defects which had persisted despite the reporting officer's efforts to have them corrected."



The Hon'ble Supreme Court in the case of State of State of UP
Vs. Yamuna Shankar Mishra, (1997) 4 SCC 7 has held as under :-

"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 to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity."

7. In view of the aforesaid discussion and considering all the facts and circumstances of the case, the OA ¹⁰ deserves to be allowed. The impugned order dated 18.7.2001 (Annexure-A-1) is quashed and set aside and the respondents are directed to expunge the adverse remarks in the ACR of the applicant for the period from 1.4.1999 to 31.3.2000 within a period of 3 months from the date of receipt of a copy of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पूरांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पित :-

- skm (1) सचिव, उच्च न्यायालय और एडवोकेट जनरल, जबलपुर
(2) आदेशक श्री/श्रीमती/श्री/श्रीमती काउंसिल
(3) प्रवक्ता श्री/श्रीमती/श्री/श्रीमती काउंसिल
(4) सचिव, उच्च न्यायालय, जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

SK Nagpal
KN Pethia

उच्च न्यायालय

7/10/04
ms