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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 68 of 2002

Jabalpur, this the 29<sup>th</sup> day of July, 2004

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

Gopal Prasad Joshi, S/o. Sri Banmali  
Joshi, aged 36 years, Inspector, Central  
Excise, Himi, Distt. Raipur. ... Applicant

(Applicant in person)

V e r s u s

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)

O R D E R

By Madan Mohan, Judicial Member -

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

"a) quash the impugned order dt. 20.3.2001  
Annexure A-1,

b) direct that the adverse remarks in the ACR of  
the applicant for 1996-97 recorded by Sri Shrawan Kumar  
be expunged,

c) direct the respondents to hold a review  
departmental screening committee for grant of first  
financial upgradation under ACP and if the applicant is  
found eligible, he should be given the same from the due  
date with all consequential benefits including arrears  
of pay and allowances with interest @ 12% per annum."

2. The brief facts of the case are that the applicant  
was appointed in the Central Excise Department w.e.f.

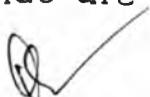
18.9.1987. He is at present posted as Inspector Central Excise, Hirani, Distt. Raipur. During the period from 1996-2001, the applicant was posted as Inspector Central Excise in the Divisional Technical Branch of Central Excise Division-I, Bhilai. As per the established office norms the Superintendent (Tech) is immediate Supervisory officer incharge of the divisional technical branch and all files of technical branch were being put up to the Superintendent (Tech) by the applicant his other colleagues. The Supdt. (Tech) is the immediate supervisory officer and is reporting officer for ACRs of the applicant. All of a sudden Sri Shrawan Kumar who was the divisional officer issued an order on 31.12.1996 directing the applicant that he will work directly under him and he will put up all the files directly to him and not through the Supdt. (Tech). The applicant was not intimated any reason for such directions. The motive behind such an order was clear when the applicant was communicated adverse entries in his ACR for 1996-97 by the Joint Commissioner, Central Excise under his letter dated 20.9.1999. Shri Shrawan Kumar wanted to act as initiating officer for ACR of the applicant with sole motive/malafide intention of spoiling the ACR. The applicant requested the Joint Commissioner, Central Excise, Raipur to inform him the basis for such adverse remarks by the reporting officer. He did not get any reply. The applicant submitted a representation on 13.3.2000 explaining that the adverse remarks were totally unjustified and requested for expunging the same. The Commissioner, Central Excise, Raipur vide his letter dated 20.3.2001 has decided the representation of the applicant in which part of the column No. 5 of the ACR i.e. he is very argumentative and does unnecessary things were expunged. The rest remarks were kept intact. The major portion of the adverse remarks have been ordered to stand



and this had lead to denial of 1st Financial Upgradation under ACP scheme to the applicant though his other colleagues have been granted the same. The applicant submitted a representation dated 26.7.2000 for extension of benefit under ACP. The respondents informed the applicant that he was not found fit by the departmental screening committee for grant of 1st financial upgradation under ACP scheme. The applicant submitted an appeal dated 26.4.2001. The respondents in turn informed the applicant that only one representation is allowed against adverse remarks and hence his appeal was not considered. Aggrieved by this the applicant has approached by filing this OA and this Tribunal/claiming the aforesaid reliefs.

3. Heard the applicant in person and the learned counsel for the respondents and also carefully perused the records.

4. It is argued on behalf of the applicant that for the year 1996-97, adverse remarks were communicated to the applicant and the remarks made in Part-III Column No. 5, that once he instigated the staff & misbehaved with senior officers, is very vague in nature as no date time and place are mentioned. In column No. 7(a) it is mentioned that "he has very poor temperament which has adverse bearing on his work & performance. None of the other factors noticed." Regarding this the applicant requested the authorities to inform him the basis for such adverse remarks by the reporting officer, but he did not get any justifiable answer. The applicant further argued that he was on deputation for training at NACEN, Mumbai during the period from 6.1.1997 to 17.1.1997. Thus, he worked under Sri Shrawan Kumar directly for less than 90 days and the report could not have been initiated by Sri Shrawan Kumar. He also submitted that the Commissioner, Central Excise, Raipur



vide letter dated 20.3.2001 ordered that the ACR is ordered to be for the said period of 31.12.1996-31.3.1997 and not for the full year 1996-97. Hence, the Commissioner is silent with regard to the period from 1.4.1996 to 30.12.1996.

Another ACR should have been got initiated from Supdt (Tech) for the period from 1.4.1996 to 30.12.1996 which has not been done. Thus the ACR for the year 1996-97 is not given by the competent authority and secondly the contents of the adverse remarks are vague in nature. The applicant also argued that he was not informed by the respondents to improve himself while it was mandatory according to the rules and law laid down.

5. In reply the learned counsel for the respondents argued that the applicant had worked under the direct control of the Assistant Commissioner, Division-I, Bhilai. The ACR with adverse remark has been reported by the Asstt. Commissioner of Division-I Bhilai and has been reviewed by the next higher officer i.e. Dy. Commissioner of Raipur. The allegation of the applicant that his reporting officer should be his immediate Supervisory officer and not the next Supervisory officer is baseless and totally misconceived. The adverse remark in the ACR of the applicant are awarded on the basis of his performance, conduct for the relevant period. The representation preferred by the applicant has been suitably considered on merit. The contention of the applicant that he has not worked for 90 days under the Supervision of Shri Shrawan Kumar, hence he could not be his reporting officer, is not correct. The confidential report of an employee is written by a reporting officer who is immediately superior to the employee concerned and reviewed by the next higher authority, and in both the case they should have supervised the work of employee for not less



than 3 months period. The training period attended by the applicant for 12 days will not be deleted in counting of 90 days period as this will be deemed to be a period on duty by the applicant. The departmental screening committee has decided the case of the applicant as per the norms and on merits and has not found him eligible for 1st financial upgradation under ACP scheme. The decision taken by DPC is justified and unquestionable by the applicant. Thus the ACR of the applicant was given by the competent authority.

6. After hearing the applicant in person and also the learned counsel for the respondents, we find that the applicant had worked directly under the Superintendent (Tech.) from 1.4.1996 to 31.12.1996. Thereafter vide order dated 31.12.1996 the applicant was directed to work directly under Sri Shrawan Kumar, Divisional Officer and he will put up all the files directly to him and not through the Supdt. (Tech.). We also find that the applicant worked for less than 90 days with Shri Shrawan Kumar because he was on deputation for training at NACEN, Mumbai during the period from 6.1.1997 to 17.1.1997. The applicant has also made certain allegations against Shri Shrawan Kumar and it is not made clear by the respondents as to why all of a sudden Shri Shrawan Kumar, Divisional Officer has issued the order dated 31.12.1996, directing the applicant to work under him and will put up all the files directly to him and not through the Supdt. (Tech.). It was also the duty of the respondents to inform the applicant about his short comings to improve himself. But no such information was given to the applicant, rather issued the said ACR. We have further perused the relevant remarks in the ACR which apparently seems to be vague. No date, time or place are mentioned, so as to establish that he instigated the staff and misbehaved



with superior officers once. We also find that the respondents did not furnish the basis for such adverse remarks to the applicant when he requested for it.

7. Under these facts and circumstances of the case, we are of the considered opinion that the Original Application deserves to be allowed. Accordingly, the Original Application is allowed and the impugned order dated 20.3.2001 (Annexure A-1) are quashed and set aside. The adverse remarks in the ACR of the applicant for 1996-97 recorded by Shri Shrawan Kumar is expunged. The respondents are directed to hold a review departmental screening committee to consider the case of the applicant for grant of 1st financial upgradation under ACP Scheme, within a period of four months from the date of receipt of copy of this order, and if the applicant is found suitable, he should be given due the same benefit from the date with all consequential benefits. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

"SA"

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....  
प्रतिदिपि अधे दित:—

(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर

(2) आवेदक श्री/श्रीमती/कु.....के काउंसल

(3) पर्यावरण श्री/श्रीमती/कु.....के काउंसल

(4) वाध्यालय, लोपाम., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

applican for Shri  
S.K. Nagpal Ado  
K.N. Patwari

3-B-64  
उप रजिस्टर

Issued  
9.8.04  
gr 9/88