

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA No.855/89

Date of decision: 16.3.93

Shri Arindam Lahiri ... Applicant

vs.

U.O.I. & Others .. Respondents

CORAM:

The Hon'ble Shri C.J. Roy, Member(J)

For the applicant ... None

For the respondents .. Shri R.S. Aggarwal

(1) Whether Reporters of local papers may be allowed to see the judgement?

(2) To be referred to the Reporter or not?

JUDGEMENT

Delivered by Hon'ble Shri C.J. Roy, Member(J)

This is an application filed by the applicant under Section 19 of C.A.T. Act of 1985 claiming relief to quash and set aside the order dated 2.3.1988 and expunge the adverse remarks as incorporated in the confidential report of the applicant for the year 1986-87 and the applicant be given all the consequential reliefs.

2. The brief facts of the case are that the applicant was working as Appellate Assistant Commissioner of Income Tax at Nizamabad. There were adverse remarks in the Confidential Report of the applicant for the year 1986-87, which that "has passed orders after long delays".

Aggrieved by that, the applicant has sent a communication on 24.9.87 for expunction of the same (Annexure A). On 3.2.88, a communication was issued to the applicant conveying rejection of his representation by the Board (Annexure B).

The applicant claims that he was posted at Naziabau which was a remote area with no effective means of communication, lack of infra-structural facilities and that his jurisdiction extended from Bijnaur in the West to Almora in the East and Sambhal in South. As such, the very nature of the duties of the applicant included holding of camps at various places for effective disposal and that he was given the below mentioned staff, some of whom had to remain at headquarters and some to follow him on tour:

1. One Headclerk/Supervisor
2. Two Stenographers
3. One LDC (Record-Keeper)
4. One Peon

The applicants states that after the Headclerk was transferred, no one was posted in his place. When one of the Stenographers was also transferred after some time, the applicant had to function with two LDCs and one Peon. In spite of this, the applicant has done his duty to the best of his abilities. The applicant was also on earned leave for two and half months. The

(P)

applicant says that he used to dictate orders on the tape-recorder and the stenographer would type the same ~~and~~ as and when he is in a position to do. The applicant has sent several communications, annexed as Annexures C, D, E, F, H, I, J, K & L, regarding shortage of staff and in spite of these no staff was appointed and the work was dislocated. So the adverse remarks are not called for and justified and hence the applicant has filed this application.

3. The Respondents have filed a counter stating that the adverse remarks passed were correct and the applicant's representation was carefully considered and rejected by the Central Board of Direct Taxes. Though the respondents admit that there was shortage of staff and that there would have been lower disposal of appeals, it would not result in not sending appellate orders already passed in the relevant fortnight.

4. The respondents state that dictation of orders on tape recorder would not count for disposal and that the applicant has not been provided with any tape recorder. They further state that no legally valid order comes into existence by dictating on tape recorder and the

M

question mark is not on quantum of his disposal but his proneness to pass orders after long delays.

5. The respondents say that only in his letter dated 6th April/May, 1987, the applicant speaks of 'backlog' and that all his letters do not justify for not sending fortnightly batches of orders for six months. When the Chief Commissioner asked for his explanation in February, 1987, the applicant started sending from March, 87 of the orders passed in September, 1986 onwards, while he was required to send the orders passed earlier in fortnightly intervals. The average disposal of appeals per month is 125, whereas the quota fixed was 165 per month. Even after making allowance for shortage of staff, the applicant's not furnishing the fortnightly reports constitute for adverse remarks. The competent authority has properly considered the applicant's representation, examined all the facts and rejected the representation. These remarks do not consider as punishment and the remarks of the Reporting Officer is an administrative function and assessment of the performance of the applicant. They deny that the work of the work of the applicant is 'exceptional' or 'very good' as claimed by him and that there is no reflection of the same

in the applicant's CR written by Shri M.L. Choudhary, Commissioner of Income Tax for the period 1.4.85 to 26.12.85 and the disposal given by the applicant in 1985-86 has no relevance in this case. In view of the same, the case may be dismissed.

6. This case is coming since 1989 and in spite of several adjournments, neither the applicant nor the learned counsel for the applicant were present on a number of occasions. Therefore, the learned coulse for the respondent Shri R.S. Aggarwal was heard.

7. As per the guidelines contained in the Swamy's compilation on Confidential Report, it is in the interest of the officer concerned as to how his performance is judged by the Reporting Officer so that it may act as a guidance to note his deficiency and shortcomings so that he can make remedical measures in order to plan his feature career. The Confidential Reports are written to improve the performance of the supporting staff and also assess his potential and give feed back and guidance to correct the deficiency.

M

7. The case of the applicant is that the adverse remarks were imposed on him even though he had worked with lack of staff in a remote area with less communication facilities. He also states that he has dictated some orders on tape recorder. The respondents clearly deny that dictation of orders in the tape recorder would amount to disposal and that he was not provided with any tape recorder and that his dictation in such a manner is not proper. Besides, they state that the applicant should have sent the fortnightly reports regularly rather than sending them in 1987 after the Commissioner of Income Tax called for his explanation.

8. In a judgement in OA No.1775/88 dated 12.4.89, the Hon'ble Tribunal held that adverse entries in the CRs, unless allegations of mala-fide are established, removal of the adverse remarks depends on the satisfaction of the competent authority. If the record has been considered fairly by the Government, the Tribunal will not interfere with the decision of the Government.

9. That apart, the applicant has failed to establish any *prima facie* case or arbitrariness on the part of the Reporting Officer who recorded these remarks. In fact these remarks

are of innocuous nature. It is also admitted that the applicant dictated orders in the tape recorder which can not be taken into consideration. The delay in sending the fortnightly reports is also not denied by the applicant. In fact the applicant has subsequently got also promotion.

10. As the applicant has not made out any case nor attributed any malafide or arbitrariness to the Officer who recorded the said entries, and neither has established that there are no grounds for making those remarks, I am not persuaded to interfere in this case.

11. Hence the application is dismissed. No orders as to costs.

hslm
(C.J. Roy)
Member (J)