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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1001  
T.A. No.

198 6

DATE OF DECISION 20.10.87

Tejinder Singh Petitioner

In person Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

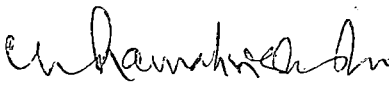
Sri P.P. Rao, Senior Advocate Advocate for the Respondent(s)  
with S/Sri S.K.Mehta & H.K. Dua, Advocates


CORAM : Agri 3b

The Hon'ble Mr. S.P. Mukerji, Member (A)

The Hon'ble Mr. Ch. Ramakrishna Rao, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No

  
(Ch. Ramakrishna Rao)  
Member (J)

  
(S.P. Mukerji)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

REGN.NO. D.A. 1001/86

DATE OF DECISION : 20.10.87

Tejinder Singh

... Petitioner

Vs

Union of India & others

... Respondents

Coram : Hon'ble Mr. S.P. Mukerji

- Member (A)

Hon'ble Mr. Ch. Ramakrishna Rao

- Member (J)

For the Petitioner

. Petitioner in person

For the Respondents

. Shri P.P. Rao, Senior Advocate  
with S/Sri S.K.Mehta & H.K.Dua, Advocates  
(Judgement of the Bench Delivered by Hon'ble  
Mr. Ch. Ramakrishna Rao, Member)

JUDGEMENT

This application is filed under Section 19 of the Administrative Tribunals Act, 1985.

2. The facts giving rise to the application lie in a narrow compass: The applicant is a national and citizen of India and a member of the Indian Revenue Service, ~~xxxxxx~~ He was working as Deputy Director of Inspection (Recovery) in the Income Tax Department at the time of filing this application. The applicant was graded as an 'Outstanding Officer' by the Union Public Service Commission (UPSC, for short) in its meeting held on 2.12.83 for promotion to the post of Commissioner of Income Tax (CIT, for short) Level II and was placed at sl.no. 2 of the panel of officers selected on the basis of merit. The UPSC held another Departmental Promotion Committee meeting on 23.9.85 and selected the applicant amongst others. He was placed at sl.no.22 of the panel consisting of 42 Assistant Commissioners of Income Tax recommended for promotion as Commissioner of Income Tax Level II on the basis of merit. Certain officers aggrieved by the selection of the applicant as an outstanding officer filed writ petitions before the High Courts at Madras, Gujarat and Delhi questioning the validity of the Annual Confidential Report (ACR, for short) of the applicant for

the period 1.4.82 to 31.3.83. Respondents 1 & 2 took the stand in those proceedings that there was no irregularity attaching to the ACR of <sup>Respondent 5 : R5 i.e.</sup> the applicant herein for the year 1982-83. While matters stood thus Respondents 3 who was appointed as the Chairman, CBDT with effect from 1.6.85 sought to introduce into the service records of the applicant, a ACR purported to have been written on 20.12.83 by the late Sri K.R. Raghavan, who was the Reporting Officer during the year 1982-83 which contained some adverse remarks. ~~against~~ The applicant ~~was~~ submitted a representation on 16.2.85 to R2. This representation as also the memorial ~~dated~~ submitted by the applicant to the President of India were rejected. Aggrieved by the refusal on the part of R1 and R2 in replacing <sup>it on the</sup> record the ACR purported to have been written by Sri Raghavan for the year 1982-83 and replacing <sup>by</sup> the ACR dated 23.4.83 earlier written by Shri Sheikh Abdulla, Director General (Investigation) and Director of Inspection, the applicant has filed this application.

3. The applicant who appeared in person strenuously contends that the controversy is concluded by the counter affidavit filed on behalf of R1 & R2 in W.P. Nos. 2092 & 2093 of 1984 in the Madras High Court wherein it was denied <sup>them that there was</sup> by irregularity in the ~~xxxxxxx~~ recording of the ACR of R5 (i.e. the applicant herein) for the year 1982-83. The stand taken by R1 & R2 in W.Ps. in the High Courts at Gujarat and Delhi was similar. The Madras High Court upheld the validity of the ACR written by Sri Sheikh Abdullah in its judgement dated 26.10.84. According to the applicant the judgement of the Madras High Court operates as a resjudicator and precludes R1 & R2 from taking a different stand in the present application. He has relied on several decisions of the

High Courts and the Supreme Court in support of his contention.

4. Sri P.P. Rao, learned counsel for the respondents, fervently pleads that the doctrine of resjudicata is not applicable to co-defendants/co-respondents unless three conditions are fulfilled. These are : (i) the existence of a conflict of interest between the co-defendants (ii) the necessity to decide such conflict in order to give the palintif appropriate relief, and (iii) a decision on the issue between co-defendants. According to Sri Rao, there was no conflict of intetests between R1 & R2 and R5 (i.e. the applicant herein) which necessitated resolving of the conflict by the High Court in the writ proceedings. Further the judgement rendered by the Madras High Court was not final and conclusive in as much as the writ petitionx was dismissed as premature. The doctrine of resjudicata is not, therefore, applicable in the present case.

5. We have considered the rival contentions carefully. Sri Rao is right in contending that the doctrine of resjudicata is not applicable in the case of co-defendants/co-respondents unless the three conditions are fulfilled. But there is a cardinal principle of law that parties to a proceeding should not take inconsistent positions. This is embodied in the legal maxim, 'Allegans contraria non est audiendus'. The law in this behalf has been stated by Bigelow as follows:

"If parties in court were permitted to assume inconsistent positions in the trial of their causes, the usefulness of courts of justice would in most cases be paralysed, the coercive process of the law, available only between those who consented to its exercise, could be set at naught by all. But the right of all men, honest and dishonest are in the keeping of the courts, and consistency of proceeding is therefore required of all those who come or are brought before them. It may accordingly be laid down as a broad proposition that one who, without mistake induced by the opposite party, has taken a particular position deliberately in the course of a litigation must act consistently with it; one cannot play fast and loose."

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After noticing this statement of law in his treatise on the Law of Evidence (13th edition, page 1152) Sircar goes on to observe :

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais. A party litigant cannot be permitted to assume inconsistent positions in court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This doctrine applies not only to successive stages of same suit, but also to another suit than the one in which the position was taken up provided that the second suit grows out of the judgement in the first."

The law is similarly stated in Halsbery's Laws of England (3rd edition) vol. 15, para 340 and has been adopted in Nagubai V. Shama Rao AIR 1956 SC 563.

6. Applying the law enunciated above to the facts of the present case, the principle of estoppel would be attracted even though the doctrine of resjudicata may be inapplicable. The reason for Sri Sheikh Abdullah writing the ACR of the applicant for the year 1982-83 instead of Sri K.R. Raghavan has been dealt with by the Madras High Court in its judgement dated 26.10.84 as follows :

"It is true that the Reporting Officer as well as the Reviewing Officer in the case of the 5th respondent was one and the same. The reason is that the Reporting Officer, one Mr. Raghavan is stated to have been suffering from cancer and therefore, he had no opportunity to write the confidential roll of the 5th respondent and that the entire list of the candidates for promotion had been sent to D.P.C. even on 20.12.1983 (20.11.1983). It may be noted here that Mr. Raghavan is reported to have died on 1.1.1984). It is further brought to the notice of this Court that the 5th respondent was not serving under the Reporting Officer, Mr. Raghavan for few months but also under one Shaikh Abdullah who was the Director of Inspection holding the additional charge of Director General. Hence the question of counter-signing by the Reviewing Officer of the confidential report of the 5th respondent written by the Reporting Officer does not at all arise."

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In view of this R1 & R2 were justified in taking the stand that the ACR of the applicant for the year 1982-83 written by Sri Sheikh Abdullah did not suffer from any irregularity or infirmity.

7. Sri P.P. Rao, ~~Rxxxxx~~ maintains that the facts relating to the ACR written by late Raghavan came to light subsequently which necessitated R1 & R2 to place the same on record and the principle of estoppel will not therefore apply to the present case since R1 & R2 laboured under a mistake.

8. This leads us to a consideration of the factual position obtaining ~~before 2x12x83 when xhe~~ on 2.1.84 when one Sri V.Chidambaran, Chairman, CBDT recorded a note of dissent regarding the grading of the applicant as 'outstanding'.

9. On 23.4.83, Sri Sheikh Abdullah, DG Inv and Director of Inspection wrote the ACR of the applicant for the year 1982-83 and forwarded it to Sri S.S.Kapur, Member CBDT. On 7.7.83 Sri K.R.Raghavan, DG Inv and Director of Inspection addressed a letter to Sri N.L. Duggal, Director (Administration), CBDT pointing out that in the case of the applicant, Shri Sheikh <sup>had</sup> Abdullah ~~had~~ taken the unusual step of writing the ACR and this may be returned to <sup>him</sup> ~~me~~ so that <sup>he could</sup> ~~I can~~ write the same and send it to Member for countersignature. From this it is clear that unless the ACR written earlier by Sri Sheikh Abdullah was ~~xxxxxx~~ returned to Sri Raghavan, he would not be in a position to write the same for the ~~xxxxxx~~ reason that two ACRs for the same period cannot co-exist on the service file of the applicant. Sri Duggal, however, did not take any action as requested by Sri Raghavan. Meanwhile, on 26.11.83 Sri Duggal addressed a letter to Sri D.N. Chaudhary, DG Inv. requesting him to send the ACR of the applicant for 1982-83 recorded by Sri Sheikh Abdullah since it was urgently required in connection with a DPC meeting.

Sri Chaudhary complied with the request and made available the ACR written by Sri Sheikh Abdullah, the then DG Inv for 1982-83, on 29.11.83. It is significant that though Sri Duggal was requested by Sri Raghavan to return the ACR of the applicant for 1982-83 written by Sri Sheikh Abdullah to enable him to write the ACR, no steps were taken in that direction though four months intervened between the date of his request and the date of forwarding the ACR written by Sri Sheikh Abdullah to the UPSC. The inference is, therefore, irresistible that Sri Duggal was aware of the fact that at the relevant time, Sri Raghavan had no opportunity to observe the work of the applicant during 1982-83 because he was suffering from cancer as noted in the judgement of the Madras High Court cited supra. After a lapse of 5½ months Sri Raghavan seems to have handed over the ACR of the applicant for 1982-83 to Sri Chidambaram, the then Chairman, CBDT. This was very much in the possession of Sri Chidambaram and if only he wanted to substitute the ACR written by Sri Sheikh Abdullah by the one written by Sri Raghavan, he could have done it but he did not do so, presumably, for the same reason given in the judgement of the Madras High Court. In the minute of dissent dated 2.1.84 Sri Chidambaram chose to act on the ACR recorded by Shri Sheikh Abdullah but did not take steps to bring <sup>on record</sup> the ACR handed over to him by Sri Raghavan after observing the usual formalities. In fact the bringing on record of the ACR written by Sri Raghavan would have obviated any dissent because the contents of the ACR were sufficiently damaging to the applicant. It is stated in the minute of dissent ~~that~~ of Sri Chidambaram that the points mentioned therein were

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brought out by himself and Member (IT), During discussion in the DPC. Even at that stage he <sup>was</sup> did not press for a fresh DPC meeting.

9. On 30.4.84 when Sri Chidambaram was relinquishing charge of the post of Chairman, he wrote a letter to Sri Subramanian Member (IT) and Chairman-designate, enclosing therewith the ACR for 1982-83. It is significant that there is no mention in the said letter that it was being sent for necessary action and that seems to be the reason why Sri Subramanian also kept quiet during his tenure of office for more than one year.

It is reasonable to presume that

Both Sri Chidambaran and Sri Subramanian who held the post of Chairman would have been alive to their responsibility and the fact that the ACR written by Sri Raghavan was shelved is prima facie suggestive that the intention of these two persons who held the post of Chairman, CBDT was to allow the ACR written by Sri Sheikh Abdullah to remain in the service register of the applicant and not <sup>it by</sup> replace ~~it by~~ the ACR written by Sri K.R.Raghavan.

10. The version of Sri M.S. Narayanan (R 3), who succeeded Sri Subramanian as Chairman, CBDT as appearing in his written statement dated 8.1.87 is that ~~he~~ he assumed charge of the post of Chairman w.e.f. ~~Rxx~~ 31.5.85 (AN); that on 17.7.85 while looking into the papers and files in his steel cupboard he found an envelope, which contained the ACR of the applicant for the year 1982-83 written by late Sri Raghavan alongwith a covering letter dated 30.4.84 addressed by Sri V.Chidambaran, Chairman ~~xx~~ who retired on that date to his ~~x~~ successor Sri N.Subramanian; that he passed on this to the office to be placed on the file; that during the course of the DPC on 23.9.85 he found that this report was not on file; that he mentioned in the DPC that there was another ACR of the applicant written by Sri Raghavan; that after returning to the office, he ~~xxxxx~~



got the same traced and was forwarded to the Chairman, UPSC on 25.9.85 alongwith his <sup>note</sup> explaining the circumstances relating to the non-placement of the ACR written by Sri Raghavan on file; that when he noticed the ACR he considered it his duty to place it on record in the interests of public service and review DPC presided over by the Chairman, UPSC has already acted upon the same on 11.8.86. In his letter dated 5.9.86 addressed to the Secretary, Appointments Committee of the Cabinet, R3 stated that ~~xxxx~~ ~~xx~~ two or three weeks after taking over charge, ~~he~~ was clearing the papers and file <sup>ing</sup> in the steel cupboard in the room and rearrang~~ing~~ them. At that time, ~~he~~ noticed an envelope which contained the ACR alongwith Sri Chidambaram's letter. In the written statement, however, R3 has stated that he took charge of the post of Chairman on 31.5.85 AN and on 17.7.85 he located the ACR of the applicant written by Sri Raghavan which means that it was after over six weeks that the envelope containing the ACR was located. Thus, there is a discrepancy in the statement of R3 as to when the envelope containing the ACR came to his notice. Be that as it may, the UPSC who were apprised of the matter stated in their letter dated 5.11.85

"It will be relevant to recall in this connection that the DPC held on 1.12.1983 for the post of Commissioner, Income Tax also considered Shri Tejinder Singh and his reports for 1982-83. The DPC graded him as 'outstanding'. However, the two departmental members of the DPC Shri Chidambaram and Shri N. Subramaniam (the same officers mentioned in para 2) gave a dissenting note to the effect that they dissented with the grading assigned to Shri Tejinder Singh. It is therefore surprising that Shri Chidambaram who had given a dissenting note in the DPC on 1.12.1983 about the grading of Shri Tejinder Singh did not on receipt of the report from Shri Raghavan on 20.12.1983, take any action to bring it to the notice of either the Commission or the higher authorities. The normal course of action would have been to bring this at that time itself to the attention of the concerned persons. Instead no action was taken and the CBDT went to the extent of disagreeing with the recommendations of the DPC and modified the grading of Shri Tejinder Singh from 'outstanding' to 'Very good' which resulted in his removal from panel. In other words, the material sent by you does not comment on the responsibility of the previous Chairmen of the ~~xxx~~ CBDT in this regard who had kept the report between themselves for more than 1½ years."

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The implications of the ACR written by Sri Raghavan being shelved for more than 1½ years does not seem to have engaged the attention of R1 & R2. They took steps to communicate the adverse remarks in the ACR written by Sri Raghavan to the applicant and reject the representation made by him without pausing to consider the effect of the abnormal delay in acting on the ACR written by Sri Raghavan as also the effect of the two previous Chairmen of CBDT excluding the same and acting only on the basis of the ACR written by Sri Sheikh Abdullah at the DPC meeting held in December 1983 and while recording the minute of dissent thereafter on 2.1.84.

10. On a consideration of the facts of the case we are not persuaded to take the view <sup>that</sup> the facts relating to the ACR written by Sri Raghavan during his life time came to light subsequently which necessitated Ra & R2 to place the same on record. The ACR having been handed over to Sri Chidambaram on 20.12.83 itself, who in his turn passed it on to his successor and the counter affidavit in the W.P. before the Madras High Court having been filed after 20.12.83, the existence of the ACR written by Sri Raghavan was very much within the ken of Sri Chidambaram. In fact, he was very much aware of the ACR at the time of recording the note of dissent on 2.1.84. The so-called ACR written by Sri Raghavan does not contain the self-assessment by the officer reported upon i.e. the applicant and Sri Raghavan seems to have written it suo motu without pursuing with Sri Duggal whom he addressed on 7.7.83 for return of the ACR written by Sri Sheikh Abdullah the then DG Inv on 20.3.83. He also does not seem to have called upon the applicant to explain why he defaulted to hand over to him the appraisal report and instead handed over to Sri Sheikh Abdullah since he has referred to the same in the ACR. The ACR is typewritten and does not bear a date. But since Sri Chidambaram has stated in his letter dated 30.4.83 that it was handed over to him by Sri Raghavan on 20.12.83, the date of handing over is taken

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as the date of the ACR by R1 & R2. The ACR/written by Sri Sheikh Abdullah within one month after expiry of the reported period unlike the ACR purported to have been written by Sri Raghavan after a lapse of nearly nine months.

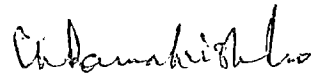
11. In view of the foregoing <sup>facts and circumstances,</sup> we are inclined to the view that the ACR of the applicant written by Sri Sheikh Abdullah for the year 1982-83 which was removed from the service record of the applicant by letter dated 7.8.86 <sup>should</sup> be restored to the service register of the applicant. We accordingly direct Respondents 1 & 2 to restore the same and remove the ACR purported to have been written by late Sri Raghavan ~~from the service record of the applicant.~~

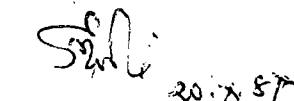
12. Before parting with the case, we would like to comment on the manner in which the undated, typewritten ACR of the applicant for the year 1982-83 purported to have been written by Sri Raghavan <sup>was</sup> received by Sri V. Chidambaram on 20.12.83 and passed on to his successor on 30.4.84 without taking any action on it during his tenure or leaving a note as to what should be done with the ACR. Sri N. Subramanian, Member (IT) who succeeded him and who participated in the DPC meeting on 2.12.83 also kept quiet during his tenure. Nothing inhibited them from leaving a note to the effect that no action need be taken on the ACR since the competent officer to write the ACR for 1982-83 in the case of the applicant was Sri Sheikh Abdullah, in view of the illness of Sri Raghavan which might have stood in the way of effective supervision by him of the applicant's work. Such a note would have helped in taking a decision on the replacement or otherwise of the ACR written by Sri Sheikh Abdullah. It would have even obviated the necessity for ~~xx~~ holding a review DPC. We are saying this because persons holding ~~xxx~~ <sup>high</sup> posts such as the Chairman, CBDT are expected to act in an impartial and objective manner, safeguarding the interests of both the Government and the government servant.

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The absence of such a candid note, besides affecting the career prospects of the applicant also posed a problem to their successor in the matter of dealing with the ACR written by Sri Raghavan. So far as Sri M. Narayanan, R3 is concerned, we are satisfied that he acted in a bonafide manner, but we cannot help observing that he acted hastily without examining the background in which the envelope containing the undated ACR purported to have been written by Sri Raghavan was put in the cupboard. He should also have ~~taken~~ kept in view the basic tenet of administrative law that matters which have attained finality should not be, normally, reopened after a lapse of considerable time, say, a year or two, except for compelling reasons. In the circumstances, the feeling is inescapable that by introducing the ACR written by Sri Raghavan into the service record of the applicant after a lapse of over two years, R3 has thrown an apple of discord into the arena of controversy and set at naught the selection of the applicant at two DPC meetings held in 1983 and 1985 which was not conducive to healthy administration.

13. In the result the application is allowed. Parties to bear their own costs.

  
Member (J)

  
Member (A)

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