

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1442/87 of 1987
T.A. No.

DATE OF DECISION 27.9.1989

Shri S.K. Goyal _____ Applicant (s)

Shri R. Kapoor _____ Advocate for the Applicant (s)

Versus
Union of India & Others _____ Respondent (s)

Shri R.S. Aggarwal _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri S.K. Goyal of the Indian Revenue Service against impugned orders dated 15.4.87 passed by the Department of Revenue (Central Board of Direct Taxes) and conveyed by the Commissioner of Income-tax, Jalandhar, regarding adverse entries in the annual confidential report of the applicant for the year 1985-86.

2. The facts of the case, as stated in the application, are that the applicant was recruited as Income Tax Officer in 1965 and promoted as Assistant Commissioner of Income Tax in April 1977 and to the Selection Grade w.e.f. 1.4.1986. The applicant had been serving as Inspecting Assistant Commissioner of Income Tax (IA CT) at Bhatinda from May/June 1981 and continued to hold this post at Bhatinda till 20.9.85, when he was transferred to Jalandhar. Administratively, the IA CT Bhatinda, functions under the Commissioner of Income Tax (C.I.T.), Jalandhar. The applicant was on leave from 20.5.85 to 20.6.85. During this period, a new incumbent, Shri Y.P. Sabherwal, took over as C.I.T. towards the end of May, 1985, and held the charge of CIT till July, 1986, when he was transferred back to Delhi. The applicant returned

from leave on 21.6.85 and resumed charge at Bhatinda as IAC. The applicant was transferred vide Board's letter dated 11.7.85 to Jalandhar but these orders were revised in August, 1985, posting the applicant to Amritsar. In September, 1985, the orders were revised posting the applicant as Appellate Assistant Commissioner (AAC) at Jalandhar which charge he took over in September, 1985. According to the applicant, report on his work for 1985-86 was recorded by the C.I.T., Shri Sabherwal, who seen his work as under:

From 21.6.85 to 20.9.85 as IAC Bhatinda and from 14.10.85 to 31.3.86 as AAC Jalandhar.

The duties of the IAC who has a number of ITOs functioning under him in his Range are of administrative nature while the Appellate Assistant Commissioner exercises judicial functions under the Income Tax Act and is assisted only by a stenographer and an L.D.C. The appellate work is not overseen by the Commissioner as no appeals lie to the C.I.T. Government have laid down targets expected to be achieved during the year by field officers of the Department. These are arrear demand collections, current demand collection and disposal of non-company cases. During the period, emphasis had shifted to Cash Collection by the Board and the targets were exceeded in cash collections by Rs. 4 lakhs. In the area of appellate work, the disposal by the applicant of old and high demand appeals was 100%. As such the remarks of the Reporting Officer who had seen his work as IAC at Bhatinda for less than 3 months are malafide and prejudicial as during ^{the period} the applicant's performance was upto the mark and even beyond expected targets. In the ACR no mention of his work as Appellate Assistant Commissioner where also he exceeded the targets was made. The adverse remarks were conveyed to the applicant on 6th August, 1986 vide Annexure A-2 to the application. These state that there was not much emphasis on collection of arrear demand and that his relations with subordinates, training and development of officers and staff and leadership were "not good". He has refuted all these and made a representation to the Chairman of the Central Board of Direct Taxes (Annexure A-3 to the application) which was summarily

rejected without giving any reasons or opportunity of personal hearing or to allow the applicant to produce relevant documents. The applicant has also pointed out that the Reporting Officer delayed writing CRS and after managing his transfer back to Delhi, recorded adverse entries in the CRs of a large number of officers to which there was an open protest and resolution passed by the Income Tax Gazetted Officers Association, Jalandhar Unit on 24.9.86 (Annexure A-5 to the application). The applicant has pointed out that on account of his guidance, supervision and leadership that Mansa Circle under him got first prize for outstanding tax collections in All India competition for one year and in the North West charge for four successive years. He has stated that the Commissioner became prejudiced against him due to baseless whispers by some notorious officials against whom disciplinary/vigilance action had been suggested by the applicant earlier. The applicant has prayed that the impugned orders conveying the adverse remarks should be quashed on the grounds that the applicant's work as IAC was seen for less than three months and that the grounds which form the basis of the report not being communicated to him has deprived the applicant of his natural right to be properly heard in such a vital matter and that his representation had been rejected summarily without assigning any reasons.

3. The respondents have not filed any reply in this case, but their counsel argued the case and also produced the file dealing with the representation of the applicant by Board. Learned counsel for the respondents stated that the applicant failed to examine cases in order to finalise them quickly even though the Commissioner of Income Tax had issued a general circular on 2.9.66 in which the name of the applicant was mentioned. The applicant, however, mentioned that the circular letter dated 2.9.86 was issued after he had handed over charge as Assistant Appellate Commissioner. The learned counsel for the respondents also stated that there was no personal prejudice of the Commissioner of Income Tax or anyone else against the applicant and in fact no malafide has been established against the Commissioner of Income Tax or any one else. He cited the case of Shri Periswamy

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- OA 19/87 - of the Madras Bench of this Tribunal, where it has been held that malafide should not only be specifically alleged but also established and unless this is done, no charge of malafide can be accepted.

4. The learned counsel for the applicant cited the case of the Regional Manager UP SRT Vs. P. Nand Kumar Dube - AIR 1979 SC 1766 - where it has been held that if the authorities fail to give reasons for writing adverse remarks, it would be bad and action on such remarks would even be worse. The case of the applicant is that unless the basis is given, he is not able to represent against the remarks. In another case of E.G. Namboodri, this Bench of the Tribunal has held that basis for remarks must be given and rejection of representations without giving any reasons would be void.

5. I have gone through the application of the applicant and given careful consideration to the arguments on both sides. I have also gone through the file dealing with the representation of the applicant in the Department of Revenue. Although writing of ACRs does not amount to direct punishment of an officer, it can have adverse consequences in as much as it affects the promotion prospects of a person. It is necessary that the applicant should be told on what counts he has failed so that he should be able to make a proper representation. It is, therefore, necessary that a speaking order should be passed by the respondents to enable the applicant to understand his shortcomings and to make representations, if any, with proper grounds. I find that although the applicant made a detailed representation to the Chairman, Central Board of Direct Taxes, on 25th August, 1986, he has not been given a suitable reply and the orders rejecting his representation had not mentioned any reasons or examples of his failure. In the circumstances, it is directed that the Central Board of Direct Taxes may reconsider the applicant's representation once again and send him a suitable reply. Till then, the adverse remarks in the annual confidential report of the applicant for the year 1985-86 may not be taken into consideration for any purpose. The applicant will have a right to move the Tribunal again if he is still aggrieved with the orders

of the Board. The application is disposed of accordingly. There will be no orders as ^{to} cost.

B.C. Mathur 29.9.88
(B.C. Mathur)
Vice-Chairman