

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(13)

O.A. No. 1777/92

Date of decision. 22.4.1994

Hon'ble Sh. B.S. Hegde, Member (Judicial)

Shri Sunil Gupta
son of Shri K.L.Gupta,
resident of 513, Building No. 4,
Income Tax Colony, Yashodham,
Goregaon East,
Bombay-400063

... Applicant

(By Advocate Sh. P.P. Khurana)

Versus

1. Union of India through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Central Board of Direct Taxes through its Chairman, North Block, New Delhi

... Respondents

(By Advocate Sh. A.S. Agarwal)

O R D E R

(Delivered by Hon'ble Sh. B.S. Hegde, Member (Judicial))

The present application is directed against the order passed by the respondents seeking expunging adverse remarks communicated vide order dated 29.12.89 (Ann.A.1) against which he made a representation which is at Ann.A.2 vide dated 3.2.90 and the same was rejected by the respondents on 11.7.1991 after a lapse of 18 months. Thereafter, he filed a memorial to president vide dated 30.10.91 which is at Ann.A.4. The reply to this

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was given by the respondents vide dated 30.1.1992 14

which is at Annexure A-5. Aggrieved by the aforesaid orders, he filed this O.A. praying for quashing the adverse remarks communicated to him.

2. The brief facts of the case is that the applicant belongs to 1987 batch of the Indian Revenue Service (Income Tax). He joined the Income Tax department as an I.R.S. probationer on 31.8.1987. On successful completion of his training, he was posted in Bombay as Assistant Commissioner. In December, 1987, the applicant was sent to National Academy of Direct Taxes (Nagpur) where he remained upto April, 1989. While he was undergoing training in the Academy at Nagpur, the applicant functioned as "Treasurer" of N.A.D.T. Income Tax Officer Mess from July, 1988 to September, 1988. for a period of three months.

3. It is a well known fact, that all probationer who undergo training at the N.A.D.T. are members of the said Mess which is run on a cooperative basis. The affairs of the Mess are run by a Committee whose members are elected and hold office for a period of approximately three months/6 months as the case may be. The applicant states that he contested for the office of Treasurer of the said Committee and was elected as such. He discharged his duties as Treasurer

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of the Committee to the best of his capability and no complaint was made at the manner extent of his working by any probationer or any officer during the tenure or even after he ceased to hold that office.

4. It is true that during the training period at Nagpur, the reporting officer in so far as the writing of the CRs on the work and performance of the probationers are concerned, is the Deputy Director (Faculty). There is one more Deputy Director who is known as Deputy Director (Administration) he is however, mainly concerned with the administrative problems of the academy and is not concerned with the writing of the CRs of the probationers. Nevertheless, the adverse remarks has been written by the Deputy Director (Admn) who is not at all concerned with the work and conduct of the applicant. Nevertheless, the Deputy Director (A) Nagpur conveying adverse remarks vide ann. A.1 dated 29.12.89 which had been recorded in the Annual CRs and the same are reproduced as under:-

Genl. observations

"Performance well in departmental examination, Conduct and performance in regard to management of affairs of the officers' Mess and handling of cash were, however, not up to the mark."

5. Learned counsel for the applicant, Sh. Khurana during the course of hearing pointed out various deficiencies, both in the adverse remarks as well as in the reply given by the respondents. Firstly, the reply filed by the respondents is very cryptic and the same is vague

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and lacked in material particulars, with the result, the applicant was handicapped in making an effective representation. Secondly, so far as the Mess affair is concerned, Mess is run voluntarily and non-official body and run on the cooperative and voluntary basis. Therefore, the applicant's performance as probationer cannot be judged with reference to his holding of any office of such a voluntary organisation. Further, the conduct of the applicant as an office bearer of the committee of N.A.D.T. Mess could be commented upon only by the general body of the N.A.D.T. Officers Mess and not by the officers of the respondents. Since the Genl. body has not raised any omission and commission on the part of the applicant, it is not open to the respondents to pass any adverse remarks purely on the basis of the belated audit objection. Further, Deputy Director(Admn.) who wrote the CR of the applicant had absolutely no occasion to expose himself with the affairs of the N.A.D.T. Mess and was thus, not well suited or well informed so as to give the adverse remarks. At no point of time, the applicant was issued any letter or memo. sounding him that there was anything lacking in his performance as an office bearer of the N.A.D.T. Officers Mess. Therefore, it is well settled and elementary too that before an officer is visited with civil consequences by way of conveying of adverse remarks, he should first be

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suitably put on guard so that he could steer his way clear of the impediments and the short comings so pointed out.

Therefore, adverse remarks without laying down any foundation amounts to malafide and an abuse of the powers.

6. The respondents, in their reply, stated that the probationer are also required to run their community affairs including messing, sports, games and other cultural and extra curricular activities in accordance with Rules and procedure laid down in the probationers Handbook. The day to day affairs of the officers Mess including maintenance of accounts and carried out by an elected Mess Committee in accordance with Income Tax Officers Mess Rules. The Respondents have denied the contentions of the applicant and fairly stated that passing of the adverse remarks was on the basis of the Audit Report.

7. I have heard the learned counsel for both the parties and perused the pleadings. It is an admitted fact, that Mess Committee is voluntary one and run on cooperative basis. The applicant during his tenure as "Treasurer" there was no complaint from any quarter saying that he was demanding more money either from any member or from any office bearer or collected any excess money. Reply given by the respondents is very cryptic and lacked in material particulars, with the result the applicant was handicapped in making the proper representation to the competent authority. As stated

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earlier management of the aforesaid officer's mess cannot be linked with the performance of the officer during his probationer training. As adverse remarks was given only on the basis of belated audit reports and not on the basis of any complaint received from any member of any probationer or from members of the managing committee of Mess Committee such remarks cannot be allowed to continue which would mar the career of the officer concerned. Having stated that the applicant has performed well in the departmental examination, it is not proper on the part of the respondent to link the mess affairs with the performance of the probationer. Though respondents have stated in their reply that the performance of the officer bearer is part of the official function, such a contention is not tenable because it is an admitted fact, that the rules relating to mess is non-statutory one and run on cooperative basis, that being so, it is not appropriate on the part of respondents that any commission and commission that had taken place while functioning as member of the mess committee should not be linked up with the official performance as a probationer. Though the applicant has filed detailed representation pointing out the various informations, the reply given by the respondent is very cryptic and general in nature apart from being satisfactory.

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8. The applicant has drawn my attention to the contents of his rejoinder in support of his case. It is denied that the applicant had admitted that there was under-charging of various accounts for the period ended on 25.9.88 or that there were no vouchers for certain expenses. Audit report is pertained to the period from 24.12.87 to 6.1.89 so far as the applicant is concerned, his tenure pertains from July, 1988 to September, 1988. The applicant was supplied with a copy of interim report thereafter he submitted his reply and the applicant never admitted that there was under-charging of Rs 3440/- during the period ending 25.9.88. The applicant was not shown the minutes record on 28.3.1989. To say that the applicant has admitted under charging of Rs 3440/- is totally false.

9. Considering the rival contentions of the parties and on perusal of the records, I am of the view, that the entire episode is based only on the belated Audit report and no direct evidence regarding his negligence/misconduct of the applicant was placed for consideration; however, the Respondents made reference to Supreme Court's decision in-Govinda Menon's v. U.O.I. which does not have much relevance to the facts of this case.

10. In the circumstances, I am of the opinion, that the adverse remarks conveyed by the respondent is liable

to be set aside and accordingly, this application
is allowed and the adverse remarks vide dated
29.12.1989 (Annexure A.1) is hereby set aside and
quashed, leaving the parties to bear their own
costs

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(B. S. Hegde)
Member (J)