

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 3175 of 1992

New Delhi, this the 9th day of July, 1997.

Hon'ble Mr. N. Sahu, Member(A)

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M.R. Iqbal,  
S/o Shri M.A. Baqui,  
D-II, Kohefiza,  
Shopal

...Applicant

(By Advocate : None)

versus

Union of India : Through

1. The Secretary,  
Dept. of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi

2. Central Board of Direct Taxes,  
through its Chairman,  
Dept. of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi

3. Chief Commissioner of Income Tax,  
Ayakar Bhavan, Hoshangabad Road,  
Shopal

4. Commissioner of Income Tax,  
Ayakar Bhavan, Hoshangabad Road,  
Shopal

5. Sh. Swantantra Kumar,  
Dy. Commissioner of Income Tax,  
Ayakar Bhavan, Navrangpura,  
Ahmedabad - 380 009.

6. Sh. K.K. Sharma,  
Commissioner of Income Tax  
Kendriya Rajaswa Bhawan,  
Old Agra Road,  
Nasik - 422 002

...Respondents

(By Advocate : Shri V.P. Uppal)

ORDER (ORAL)

Hon'ble Mr. N. Sahu, Member(A)

The grievance in this OA is against the  
remarks communicated by a letter of the Commissioner  
of Income-tax dated 24.06.1992. The remarks relate to  
the period 1991-92 and are reproduced below -

Hon'ble

"Col.15 Comments on Columns 12 and 13

(21)

In Sahastradhara group of cases survey was conducted by the officer which enabled the department to lay hands on incriminating material. However, thereafter he did not pursue the investigations in the case and DCIT had to extract data from seized records for initiating enquiries from banks. There is no concealment of income involved in the case of M/s Synthochem for A.Yr.87-88. The officer is confused on facts.

The officer is good at identifying issues but thereafter does not carry out investigations with a view to prove the case against the assessees. No worthwhile case of investigation has been completed by the officer during the year on his own initiative.".

Col.19. Integrity "Doubtful"

Part-V:Col.4: General assessment  
"Inadequate".

Kenashika -

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2. This is an old case of 1992. The learned counsel for the applicant was not present on several dates. It was noted on 04.07.1997 that one last opportunity would be given to the applicant to argue his case and it was listed as part heard to this date. Neither the applicant nor his counsel is present today. In this background there is no other alternative except to dispose of this OA on the basis of the pleadings and on the basis of submissions made by Shri Uppal, learned counsel for the respondents.

3. The argument of Shri Uppal is that the adverse remarks mentioned above have two aspects: one is factual, namely, that the applicant has not pursued investigation in the Sahastradhara group of cases although the department on a survey was able to lay its hand on incriminating material. The other aspects of the confidential remarks are that the applicant's integrity was stated to be doubtful and his general assessment was rated as inadequate. The applicant did not rebut the factual observation with any factual material in the OA. With regard to doubtful integrity the applicant stated that no specific instances or material was provided in arriving at such a conclusion. Against this, learned counsel for the respondents has cited a decision of the Apex Court in the case of Union of India Vs. M.E. Reddy, 1979 SLJ 738. In particular he has drawn my attention to the remarks of the Apex Court at page 748 wherein the Apex Court observed at para 17 as under -

*Hanasinghe.*

SPI

"It will indeed be difficult if not impossible to prove by positive evidence that a particular officer is dishonest but those who have had the opportunity to watch the performance of the said officer from close quarters are in a position to know the nature and character not only of his performance but also of the reputation that he enjoys"

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The learned counsel for the respondents also cited the decision of the Apex Court reported in JT 1997 (4) 156 in the case of Swatantra Singh Vs. State of Haryana & ors. There also the Apex Court has held that the Reporting Officer honestly believed that the petitioner would prove himself efficient provided he controlled temptation for corruption.

4. The grievance of the applicant as gathered from the OA is that objective reporting has not been made and sufficient material has not been adduced to justify the adverse remarks. It is stated that the applicant has been handicapped in making an effective representation on account of failure of the respondents to furnish to him the necessary material. The adverse remarks have no relationship with the applicant's performance during the year 1991-92. It is submitted that there was no communication during the year pointing out any shortcomings in his work. He questioned the remarks made against integrity column and he objects to the general summing up as "inadequate" as based on prejudice. It is stated in the OA that the applicant had crossed all the Action Plan targets laid down by the CBO. He further referred to the periodical reviews sent by the

Harasimh

reporting officer in which the applicant's work was appreciated but when it came to the writing of the C.R., these earlier commendations were not considered.

(DA)

5. I have carefully considered the averments made in the OA. I have heard the learned counsel for the respondents. While the adverse remarks against columns 15 and 19 have been recorded by the Reporting Officer, the entry against column 4, Part V of the ACR has been recorded by the Reviewing Officer. The applicant had filed a rejoinder in which the delay in disposing of his representation was pointed out. He repeats his claim in the rejoinder that there was no basis for recording the adverse remarks that had been communicated to him. The representation had to be disposed of before the DPC met in December, 1992 and that was possible only when the material was supplied to the applicant to make an effective representation and this request was refused. He further states his grievance that he should have been informed of the substance of remarks made that are favourable to him. He states that besides the two cases adversely commented upon, there are eleven other cases mentioned in his appraisal report which were not brought out or commented upon. His claim is that he had dealt with the Sahastradhara group in 1990-91 when there was no adverse remark in that year whereas during 1991-92, this case was specifically mentioned as the basis for an adverse remark when he did not handle the same in that year.

Harasimha.

6. After considering submissions made in the pleadings it appears to me that there is no merit in this OA. The respondents have focussed on the investigating ability of the applicant in two cases - (i) M/s Sahaharadhara and (ii) M/s Synthochem. In the former, they said that the applicant did not pursue the investigations, although incriminating material was discovered. With regard to the other, it is said that no concealment was involved and ~~and~~ the officer was confused on facts. They have further recorded that no worthwhile case of investigation has been completed. These are all factual observations on the ability of the applicant to conduct an investigation. The applicant did not adduce any convincing material to establish that the above observations are based on prejudice and not on facts.

(25)

7. I agree with the submissions made by the learned counsel for the respondents who cited two Apex Court decisions to support his argument that no specific material need be adduced in support of remarks on integrity. Such remarks are made on the observations of the conduct of the officer reported upon. As observed by the Apex Court in Swatantra Singh's case: "Sometimes, there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence, like the remarks made in the present case."

*Harasimh*

8. Thus, the remarks on integrity cannot be substantiated and there is no need to do so. With regard to the general summing up on the performance of the applicant which was "inadequate", it is based on the total impression that the reporting officer gathered and this sums up not necessarily deficiency in quantity of output but possibly deficiency in quality. Even though quantitative targets were met, yet as investigations have been adversely commented upon, the general summing up as "inadequate" was mainly aimed to indicate deficiencies in the qualitative aspect. It is emphatically stated that the applicant did not conduct sustained investigation and establish concealment or conclude a case after properly utilising the material on record.

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9. In view of the above discussion the impugned adverse remarks in the A.C.R. do not call for any interference.

OA is dismissed. No costs.

*Nareswar Sahu*,  
( N. SAHU )  
Member(A)

/Kant/