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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Registration O.A. No.515 of 1988.

J.R. Tamta Applicant.

Versus.

Union of India & others Respondents.

Hon'ble D.S. Misra, A.M.

Hon. D.K. Agarwal, J.M.

(By Hon'ble D.K. Agarwal, J.M)

The applicant, J.R. Tamta, Deputy Commissioner of Income Tax, Allahabad Range, Allahabad has sought the following two reliefs by means of an application u/s 19 of Administrative Tribunals Act, 1985.

(i) Expunction of adverse remarks recorded by the Reviewing Authority i.e, Zonal Member of Central Board of Direct Taxes, in col. No.22 of the Annual Confidential Report for the year 1985-86.

(ii) Promotion to the post of Commissioner of Income Tax with his due seniority.

2. The brief facts are that the applicant having been selected to Revenue Service by the Union Public Commission, was appointed as Income Tax Officer in the year 1966, while posted as Inspecting Assistant Commissioner, Jabalpur in the year 1985-86, he was given additional charge of Assistant Commissioner of Income Tax, Pay Unit, Secretary of Central Government Employees Welfare Co-ordination Committee, that he discharged his duties to the satisfaction of his superiors but, the Reviewing Authority i.e. Zonal Member of Central Board of Direct Taxes, in-charge of the State of M.P, disagreeing with the report of the Reporting Officer, i.e., Commissioner of Income Tax, Jabalpur awarded adverse remarks to the

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applicant in Col. 22, which was communicated to him by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi, vide letter dated 5.8.1986, Annexure '3' to the petition. The following adverse portion only was communicated to the applicant :

"Does the reviewing officer agree with the remarks of the Reporting Officer? If not, the reasons for disagreeing and the extent of disagreement may be mentioned in brief." -

"No, the officer's performance fell short of the targets fixed under several heads like collection of arrear demand, sample scrutiny assessment, penalties and major audit objections."

3. The applicant in the first instance made a representation to the Chairman, Central Board of Direct Taxes, New Delhi, on 22.9.1986, which was rejected on 29.10.1986 (Annexure '5') except that the words 'major audit objections' were deleted. Thereafter a memorial was submitted by the applicant to the President of India on 24.4.1987 which was also rejected and communicated to the applicant vide letter of Commissioner of Income Tax, Allahabad, dated 8.10.1987, Annexure '7' to the writ petition. In between a meeting of Departmental Promotion Committee took place in September, 1987 wherein the applicant was denied promotion to the post of Commissioner of Income Tax probably on the basis of the aforesaid adverse remarks recorded by the Member, Central Board of Direct Taxes.

4. The applicant alleges that duty of; (a) collection of the arrear demand, (b) sample scrutiny assessments, and (c) penalties, were performed by his subordinate Class I/Class II officers. The applicant was required to only supervise their work; that the reviewing officer omitted to take a note of this fact while holding the performance of the applicant inadequate under the heads (i) collection of arrear demand, (ii) sample scrutiny assessment, and

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(iii) disposal of penalties. The applicant also alleged that he remained on earned leave for 45 days on medical grounds and resumed duty on 12.9.1985; that he was twice transferred vide the orders of above said reviewing authority on 20.2.1986 and 4.3.1986; that the applicant was handicapped in the discharge of his duties in the year in question on account of the above two factors, i.e., leave and uncalled for and untimely transfer orders passed by the above said reviewing authority. The applicant further alleges that he was given an award by the Government of India, Ministry of Finance for having exceeded the target of collection of taxes having collected highest tax under the Commissioner of Income Tax, Jabalpur charge for the year 1985-86; that the applicant was also granted selection grade w.e.f. 1.5.1986 under the orders of the Government of India dated 24.6.86; that the applicant was confirmed as Inspecting Assistant Commissioner w.e.f. March, 1987 by an order dated 3.7.1987. He also alleged that the assessment of the reviewing authority was against facts and contrary to the assessment made by the Reporting Officer and the same was a result of bias. In the first instance the applicant was transferred as a result of bias and then awarded the adverse remarks. It has been clearly alleged that the assessment was arbitrary. It has been further alleged that the decision on the representations against adverse remarks was bad in law because facts were not taken into account while disposing of the representations and that the representations were rejected by a bald order without assigning reasons.

5. The respondents, in the counter affidavit, have disputed the jurisdiction of the Tribunal to grant the reliefs claimed by the applicant on the analogy that the Tribunal cannot sit as an Appellate Authority over a decision of a Central Board of Direct Taxes and, therefore, the Tribunal has no jurisdiction to expunge the adverse remarks; once the representation has been considered by the Chairman, Central Board of Direct Taxes, the same cannot be made the subject matter of adjudication; that the performance of the

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applicant was adjudged on objective analysis with reference to the target assigned to him. It was further alleged on behalf of the respondents that the De,partmental Promotion Committee had found the applicant 'not fit', for promotion and, therefore, the applicant was not entitled to any relief.

6. The adverse portion of the remark, as contained in columns 22 to 24, reads as follows :-

"22. Does the reviewing officer agree with the remarks of the Reporting Officer?" - "No. Officer's performance fell short of the targets fixed under several heads like collection of arrear demand, sample scrutiny assessments and penalties."

"23. Fitness for promotion (mention here not yet fit/fit/fit out of turn)?" - "Not yet fit."

"24. General Assessment?" - "An average officer. Needs also to be watched from the angle of integrity as he enjoys poor reputation."

7. The assessment of the Reporting Officer is a very relevant factor in this case. The Reporting Officer has observed as follows in columns No. 13 to 20 :-

13. The overall picture is satisfactory. There are shortfall in collection of arrear and current demand and it W.T. & penalty disposals but that does not indicate lack of involvement on the part of the I.A.C. He did exert himself and the main targets of budget and search assets were reached.

14. I agree with the resume. The I.A.C. had to devote some time to other activities mentioned in the resume. He discharged these other duties creditably.

15. a) Knowledge of Direct Tax Laws : Very Good
b) Knowledge of Accounts : Good
c) Knowledge of Procedure : Good

16. Relation with
a) Superiors : Very Good
b) Colleagues : Very Good
c) Subordinates : Very Good
d) Public : Very Good.

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17. Other qualities
- i) Decision making : Very Good
 - a) Speed : Good
 - b) Soundness : Very Good
 - ii) Drafting of Orders/Reports : Good
 - iii) Control of Officers & Staff : Very Good
 - iv) Guidance of officers & Staff : Very Good
 - v) Training & Development of officers & staff : Very Good
 - vi) Leadership : Very Good
 - vii) Capacity to handle pressure of work : Good
 - viii) Investigating capacity : Good
 - ix) Capacity to present, argue cases before Appellate Authorities (for Departmental representatives only) : Not tried during the year.
18. Integrity : Nothing adverse found.
19. Nature of placement for which the officer is suited : Administration/ Audit/Secretariat.
20. General observations : The officer has good executive capacity and can get work done from his subordinates.

The above observations of the Reporting Officer coupled with the fact that he was rewarded for highest tax collection in the year in question go a long way. It would also appear that the Reporting Officer has found it as a fact that the main targets of budget and search assets were reached. It is also very relevant to mention that the Reporting Officer has observed "..... does not indicate lack of involvement on the part of I.A.C., he did exert himself....." The Reporting Officer observed "I agree with the resume he discharged other duties creditably". A perusal of the resume would disclose that it deals with all heads and sub-heads which were the basis of the assessment either of Reporting Officer or the Reviewing Authority. In these circumstances, the question is as to whether the reviewing authority can be deemed to have applied mind to

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the factual position disclosed in the resume and the observations of the Reporting Officer to the effect that the applicant fully exerted himself and that there was no lack of involvement on the part of the applicant. We are of the opinion, that, without making a reappraisal or re-assessment, it can be safely inferred on the basis of data available on record that the assessment of the Reviewing Authority does not indicate application of mind to the facts on record, more particularly in view of the facts detailed in the representations, Annexures '4' & '6' submitted by the applicant for expunction of the remark and the report of the Reporting Officer i.e. Commissioner of Income Tax, Jabalpur expressing complete agreement with the resume submitted by the applicant which forms part of A.C.R. of the year in question.

8. We may make a passing reference to the facts contained in the representations (Annexures No. '4' & '6' to the petition). The applicant submitted in para 5 (Annexure '4'), that his duty as Range Inspecting Assistant Commissioner, was to supervise the work of the field officers, issue guidelines, instructions, clarifications wherever sought, and motivate the officers; that achieving the desired result of the Action Plan targets depended on many factors, such as adequate strength of the members of staff, their efficiency, general atmosphere of the place/charge etc.etc.; that the applicant had put all sincere efforts to achieve the action plan target, and the efforts were not lacking on his part to achieve the Action Plan target. It was submitted in para 8 (Annexure '4') that the applicant was on earned leave on medical ground for a period of 45 days; that he faced two transfers in the month of February and March, 1986; that thus, he was handicapped in the second and fourth quarter of the year in question, when maximum results were likely to be achieved. It was urged in para 4 (Annexure '6'), that if, compared with the performance of other officers of equal rank, it would turn out that the applicant's achievement of

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41% arrear demand is not the lowest, either in terms of percentage or quantum. Similarly, in the field of sample scrutiny assessment, the applicant's performance at 49.1% was the highest in Jabalpur charge in terms of percentage and quantum. It was further alleged in para 5 (Annexure '6') that as regards disposal of penalties, the performance of the applicant at 41.07% (Income Tax) and 31.54% (Wealth Tax), is better than many other Ranges.

9. The above facts become relevant for two reasons, firstly because the Commissioner of Income Tax (Reporting Officer), has taken note of the facts and circumstances, under which the target of collection of arrear demand, sample scrutiny assessment, and penalties fell short in the Range, under the charge of the applicant. And, secondly, because the Central Board of Direct Taxes, or the President of India did not assign any reason, as to why, the facts as put forward by the applicant and agreed to by the Commissioner of Income Tax, were not accepted by the CBDT or Government of India, New Delhi, while rejecting the representations of the petitioner against the adverse remarks, as recorded in column No.22 of the confidential remarks for the year 1985-86. We have already quoted above the observations of the Reporting Officer to the effect that the applicant was fully involved in performance of his duty and that he exerted himself; that the main target of budget and search were reached. The Reporting Officer, at the cost of repetition, it may be mentioned, has also observed that the applicant had to devote time to some other activities and that he discharged those other duties creditably.

10. The question as to whether the High Court or the Tribunal has or has not the jurisdiction to expunge the adverse remarks, the views are divergent. The Madras High Court observed as follows in a case :

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"the confidential reports are subjective satisfaction of the officer concerned though normally one is expected to come to the satisfaction on an objective assessment of the work of subordinates. Even so, the High Court exercising its power under Article 226 of the Constitution cannot sit in judgment over the remarks of the officer as to subjective satisfaction is not open to objective tests by the High Court."

The Madras Bench of this Tribunal in O.A. No. 19 of 1987, D. Periaswamy v. Chairman, CBDT, New Delhi and others, rejected the application of the applicant for expunction of adverse remarks on the ground that the Tribunal cannot sit as a further appellate authority over a decision rendered by the appellate authority of the applicant, and secondly, that it is not possible for the Tribunal to reappraise and assess the applicant's work and conduct and adjudge whether the assessment made by the immediate superior authority or the reviewing authority, was or was not appropriate. In a subsequent decision in O.A. No. 511 of 1986, E.G. Nambudiri App. v. Union of India (ATR 1987 (2) CAT 360), the Principal Bench of this Tribunal directed the expunction of adverse remarks on the ground that annual confidential remarks, though an administrative function, have to be exercised with great caution and care, and any representation against the adverse entry must be considered carefully and no impression should be given that the authority considering the representation did not apply its mind to such a representation; that if, reasons are not given and a bald order is passed, rejecting the representation, it would be constituted that the concerned authority had not applied its mind. In the case of Madan Mohan Khatua v. State of Orissa and others (1978 (1) SLR 829), the Orissa High Court observed as follows :-

"In the instant case, the representation of the petitioner has been disposed of without indication of any ground. It also does not show that the defects pointed out by the petitioner against the record of

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the entry were taken into consideration. Undoubtedly, the representation made by the petitioner to the administrative superior is not required to be disposed as a revision to a judicial authority. Yet, it is appropriate that the representation made to the administrative superior is disposed of in such a manner that the representationist is in a position to appreciate that the grievances indicated in the representation were taken into account. A bald order indicating the fact of rejection would not satisfy the aggrieved officer and it is likely to create an impression that the merit of the matter has not been taken into account."

11. The significance of the annual remarks cannot be under rated. The adverse remarks in ACRs of an officer can have adverse effect on his promotion and even in some cases his continuation in service. Therefore, it assumes importance that, as far as possible, reasons should be recorded while rejecting the representation against an adverse remarks. Merely a bald order is not sufficient. We find that the representation of the applicant was rejected by the Board of Direct Taxes in the following words (Annexure '5' to the petition) :-

"..... After careful consideration of various points raised by you in your above representation, ~~it has been~~ it has been decided that the remarks "and major audit objection" should be expunged. The other remarks have been confirmed" "

The memorial to the President was rejected take this (Annexure '7' to the petition) :

"..... the competent authority considered various points raised by Sri J.R. Tounta, Asstt. Commissioner of Income Tax in his memorial dated 24.4.1987 against Central Board of Direct Tax's decision on his representation against the adverse remarks recorded in his ACR for the year 1985-86, but it is regretted that his request for expunction of the said remarks cannot be acceded to."

12. It is correct that the Tribunal cannot assume jurisdic-

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tion to reassess the work and conduct of an officer. However, the reappraisal or assessment means that the Court cannot substitute a remark, but there is no bar for the Tribunal which is a substitute of High Court, to order deletion of a remark, which is not based on material or is against the facts on record. Likewise, if in dealing with the representation applications of mind is not indicated, a mandamus has got to issue to decide the representation afresh.

13. In the above facts and circumstances, we are of the opinion that mandamus should be issued to decide the representation afresh instead of quashing the entry.

14. The second relief is about the promotion of the applicant to the post of Commissioner of Income Tax. In this regard, we are of the opinion that it has to be considered by the Departmental Promotion Committee after, (a) decision of the representation against adverse remarks as mentioned above, and (b) an entry is made in ACRs of the officer in the year in question, in accordance with the provisions of Chapter VII, Rule 2(a) which requires that a note be made in the confidential reports about the commendable work done by the officer. The applicant was given an award by the Ministry of Finance, Government of India, for the year 1985-86 for having collected highest tax under the Commissioner of Income Tax, Jabalpur charge. Therefore, this commendable remark must find place in his CR dossier. Therefore, we hold that his representation be decided by the Chairman, Central Board of Direct Taxes within two months hereof and a review Departmental Promotion Committee held within three months thereafter. Accordingly, the application is partly allowed. We hereby direct the respondents that the adverse remarks recorded by the Reviewing Authority in the applicant's ACR for the year 1985-86, in column 22, be examined again and judged in the light of discussions made above in the body of judgment and thereafter hold a Review Departmental Promotion

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Committee, as mentioned above, to consider the case of the applicant for promotion on merits and communicate the result thereof to the applicant.

15. The application is disposed of accordingly. We make no order as to costs.

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MEMBER (J). 5.7.89

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MEMBER (A).

Dated: Lucknow : July 5th, 1989.

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