

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 912 of 2003

Allahabad this the 20th day of February 2004

Hon'ble Mr.A.K. Bhatnagar, Member (J)

Mohit Pradhan, S/o Late Shri M.N. Pradhan, Aged about 43 years, R/o 50 Tagore Town, Allahabad, at present posted as I.T.O. (T.D.S.), Office of the C.I.T., 38, M.G. Marg, Allahabad.

Applicant

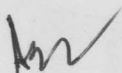
By Advocate Shri Satish Mandhyan

Versus

1. Union of India through Secretary(Revenue), Ministry of Finance, North Block, New Delhi.
2. Central Board of Direct Taxes, through its Member(Personnel), Ministry of Finance, North Block, New Delhi.
3. Chief Commissioner of Income Tax, 5, Ashok Marg, Lucknow.
4. Chief Commissioner of Income Tax, 38, M.G. Marg, Allahabad.
5. Commissioner of Income Tax, 38, M.G. Marg, Allahabad.
6. Additional Commissioner of Income Tax, Range-3(Mirzapur), Now Range-1, 38, M.G. Marg, Allahabad.
7. Shri Ashok Kumar, Additional Commissioner of Income Tax, Range-1, 38, Mahatma Gandhi Marg, Allahabad.

Respondents

By Advocate Shri Ashish Gopal



ORDER

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 by which the applicant has sought the following reliefs:-

"(I) issue an order or direction in the nature of certiorari quashing the impugned order dated 12.03.2003 and also to quash the adverse remarks for the year 2001-02 communicated by letter dated 28.08.2002;

(II) issue an order or direction in the nature of mandamus not to give effect the impugned order dated 12.03.2003;

(III) issue any other order or direction which this Tribunal may deem fit and proper in the circumstances of the present case.

(IV) Award the cost of the application."

2. The brief facts of the case as per applicant are that he was appointed as Income Tax Inspector on 01.05.1985 in the respondents' establishment at Bareilly and he was promoted on the post of Income Tax Officer in the year 1993. At the relevant time, the applicant was posted as Income Tax Officer, Mirzapur and respondent no.7 i.e. Shri Ashok Kumar, Additional Commissioner, Income Tax, Range 1, 2 and 3 was the controlling authority. It is also alleged that respondent no.7 used to visit Mirzapur very scarcely and he had visited Mirzapur only thrice in the entire financial year 2001-02, having a very less opportunity of monitoring the working of the applicant as I.T.O. Mirzapur in the right perspective. It is also claimed that period so specified is specific and mandatory as per time schedule for preparation of confidential report. The time schedule for completion of A.C.R. is 22nd of May every year and the Reviewing Officer has to give his report by 5th of June. In the applicant's case, the adverse entry has been communicated vide order dated 28.08.2002 for financial year 2001-02, which is clearly barred by time for which no explanation has been forwarded in those reports. It is also alleged that in the applicant's case gross in

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justice has been committed by the Reporting Officer as well as by the Reviewing Officer. Reporting Officer i.e respondent no.7 made adverse remarks against the applicant for the financial year 2001-02 which was communicated to the applicant vide letter dated 28.08.2002 out of personal prejudices. It is also claimed that against the communication of the adverse remarks the applicant preferred a detailed report dated 27.07.2002 to the Chief Commissioner of Income Tax, Allahabad, which is annexureA-4 to the O.A. in which the applicant had made specific allegations of malafides against the Reviewing Officer as well as Reporting Officer giving out specific details and instances leading to prejudice against the applicant. The grievance of the applicant is that although a detailed representation was filed within the prescribed period but the same was rejected without application of mind and without considering the voluminous documents filed by the applicant in support thereof. It is also claimed that the Cadre Controlling Authority i.e. C.C.I.T., Lucknow had fixed date for hearing as 31.01.2003 on which date the applicant had appeared before the competent authority and apprised him each and every details regarding his matter alleging the entire proceedings as time barred as the Reporting Officer was to give remarks by 22.05.2002 and Reviewing Officer by 05.06.2002 but both the orders were passed beyond prescribed period. None of these aspects have been taken into consideration by the Chief Commissioner, Income Tax in his order dated 12.3.2003. It is also claimed that the impugned order dated 12.3.2003 has been passed C.C.I.T., Allahabad whereas the opportunity of hearing was given by the C.C.I.T., Lucknow. It is further claimed that on the representation of the applicant made against the adverse remarks awarded in the financial year 2001-02 by respondents no.6 and 7, the impugned order has been passed without considering the malafides against the Reporting Officer as well as Reviewing Officer. Aggrieved by the illegal action of the respondents, the



applicant has approached this Tribunal and has filed the present O.A.

3. Learned counsel for the applicant submitted that all the procedures as well as time schedule have not been followed only with intend to harass the applicant. It is further submitted that the intervening events which formed basis for recording ACR ought to be that period for which reporting is being done and no document or events subsequent to the reporting period should at all be taken into consideration. The Reviewing Officer as well is enjoined upon the duty to make his personal assessment on the material on record but, is not required only to ditto the remarks of the Reporting Officer as he is free to expunge, enhance or rewrite the adverse entry. It is also submitted that the appellate authority should have considered allegations of specific malafides made against the Reporting as well as the Reviewing Officer. It is further submitted that subsequent events should not have been taken into cognizance for making A.C.R. entry for the year 2001-02. It is further submitted that the appellate authority in the applicant's case was Cadre Controlling Authority i.e. C.C.I.T., Lucknow, who was competent to decide the representation of the applicant instead of the Appellate Authority-C.C.I.T., Allahabad who passed the impugned order. Thus, the order passed by the appellate authority are ex-facie illegal and arbitrary and tainted with malafide. In short, the applicant's counsel raised his arguments on four points that no opportunity of hearing was given to the applicant while passing the appellate order. Secondly, although several instances were mentioned in the appeal filed by the applicant but in the appellate order those were not specifically dealt with. It is also contended that it was not communicated to the applicant. Learned counsel for the applicant finally submitted that the order passed by the appellate authority is cryptic and has been passed without application of mind, hence it is liable to be quashed. The learned counsel for the applicant placed reliance on the following Judgments;

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- (i) M.S. Bindra Vs.U.O.I. & Ors.1998(80)FLR 452,
- (ii) Sukhdeo Vs.The Commissioner, Amravati Division 1996 (73)FLR 1644 and;
- (iii) Badrinath Vs. Government of Tamilnadu and Ors. 2000(8) S.C.C. 395.

4. Resisting the claim of the applicant, the respondents have filed counter-affidavit, in reply to which rejoinder affidavit has been filed by the applicant reiterating the facts stated in the O.A. Learned counsel for the respondents submitted that personal hearing was accorded to the applicant and a proper and fair opportunity was given to him to defend himself.

5. The learned counsel for the respondents invited my attention to paragraph 14 of the counter-affidavit filed by the respondent no.6, replying paragraph 20 of the Original Application, explaining the facts and circumstances of the case of Dr.A.K. Srivastava. Learned counsel for the respondents contended that the time prescribed in preparing the ACR is not mandatory but it is directory. The Reporting Officer has written the ACR within the time as stated in paragraph no.6 of the counter affidavit, filed by the respondent no.6 who has clearly mentioned the specific date of forwarding the ACR. Learned counsel for the respondents finally submitted that the charges leveled against the respondents are baseless as no injustice has been caused in deciding the representation of the applicant by respondent no.4 i.e. C.C.I.T., Allahabad it was rejected after proper application of mind considering all the grounds taken by the applicant in his representation. It is also submitted that the representation against adverse remarks will lie to the authority superior to the counter signing authority, if any, or to the Reporting Officer was Additional C.I.T., Allahabad. Hence the competent authority by whom the representation was to be decided, was C.C.I.T., Allahabad i.e. respondent no.4, which has

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rightly decided the representation of the applicant after considering all the points raised by the applicant.

6. I have heard counsel for the parties at length and perused the pleadings available on record.

7. I have also closely perused the letter dated 28.08.2002(annexure-2) issued by Commissioner of Income Tax, Allahabad communicating the adverse entries in the A.C.R. for the financial year 2001-02 to the applicant and the order dated 12.03.2003 passed by C.C.I.T. Allahabad passed on the representation preferred by the applicant which clearly shows that the applicant was given opportunity of hearing and Reporting Officer and Reviewing Officer were also consulted before passing the impugned order. It is also mentioned that the relevant records were also perused before passing the impugned order dated 12.03.2003. It is also mentioned in the order that copy of it has duly been sent to the applicant so the plea taken by the applicant that it was not communicated to him, does not hold water.

8. Argument of learned counsel for the applicant that the order passed by the appellate authority is cryptic and unreasoned as it was not passed considering the representation of the applicant containing about 70 pages, is considerable to some extent but, in the light of law laid down by the Hon'ble Apex Court in the case of **Union of India and Others Vs.E.G. Nambudiri A.I.R. 1991 S.C. 1216** and in case of **Bharat Ram Meena Vs. Rajasthan High Court, Jodhpur and others 1997(3) S.C.C. page 233**, this plea of the applicant is not tenable. Paragraph 10 of the Judgment in Union of India and others(supra) reads as follows;

"10. There is no dispute that there is no rule or administrative order for recording reasons is rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record

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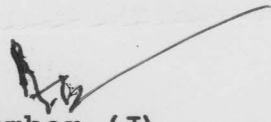
reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representations merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

9. In view of the law laid down by the Hon'ble Supreme Court and facts and circumstances mentioned above, I am of the view that the orders passed by the Reviewing Authority and Appellate Authority cannot be termed as illegal because of not assigning any reasons in passing the impugned order (annexureA-1).

10. Learned counsel for the applicant has also raised a point that the reasons shown in the impugned order in sub paras 1 and 2 of Paragraph 2 (Knowledge of Procedure) and (Relation with Public), pertains to financial year 2002-03 while the relevant period for the financial year would be from 01.04.2001 to 31.03.2002.

In my considered opinion this plea of the learned counsel for the applicant is a matter of record, which can be verified and reconsidered by the department.

11. Accordingly, I am of the view that no judicial interference is warranted in the matter. The O.A. stands disposed of with liberty to the applicant to file a fresh representation to respondent no.4 for considering and verifying the period which should have been considered for awarding the A.C.R. for the financial year 2001-02, and the respondent no.4 is directed to reconsider whether the period for awarding the A.C.R. has correctly been taken or not expeditiously, preferably within one month from the receipt of the representation along with a copy of this order. No order as to costs.



Member (J)

/M.M./