

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

14
O.A. No. 323 OF 1986.
TxxNs.

DATE OF DECISION 18-2-1992.

Prabhu Dayal Khandelwal, Petitioner

Party-in-person. Advocate for the Petitioner(s)

Versus

Secretary, Central Board of Respondent s.
Direct Taxes, New Delhi & Ors.

Mr. M.R. Bhatt, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

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. Whether it needs to be circulated to other Benches of the Tribunal?

Prabhu Dayal Khandelwal,
Inspecting Asstt. Commissioner of
Income-tax, Range-III,
C.U. Shah Chambers,
Ashram Road, Ahmedabad-14. Applicant.
(Party-in-person)

Versus.

- 1) Secretary,
Central Board of Direct Taxes,
New Delhi.
- 2) Union of India,
New Delhi.
- 3) Chairman,
Central Board of Direct Taxes,
North Block,
Central Secretariat,
New Delhi. Respondents.

(Advocate: Mr. M.R. Bhatt)

J U D G M E N T

O.A.No. 323 OF 1986

Date: 18-2-1992.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Mr. P.D. Khandelwal, party-in-person and
Mr. M.R. Bhatt, learned advocate for the
respondents present.

2. This application is filed by one Inspecting
Assistant Commissioner of Income Tax, Range-III
Ahmedabad seeking the relief that the impugned
order of the Chief Commissioner of Income Tax
order of
(Administration), and Commissioner of Income Tax
Gujarat-I, dated 28th January, 1984 in a review
petition to the President of India against adverse
remarks in the Annual Confidential Report of the

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case before the C.A.T. Madras Bench, the remarks were communicated in the first instance to the applicant not as instructional or advisory remarks. In the instant case before me also, the remarks initially were communicated to the applicant not as advisory remarks. It was only in the review petition that the President of India considered the case of the applicant and decided that the remarks in the Confidential Report of the applicant for the year 1979-80 should be treated as advisory. The C.A.T., Madras Bench in the case cited above held that if any advice is to be rendered by a superior officer to a subordinate officer, it could be done in the form of a separate communication and it need not form part of the annual confidential report and the reason is that if an advisory remark forms part and parcel of the annual confidential reports and it is communicated under the relevant rule, any member of the DPC is most likely to take note of such remarks and might even be influenced by those remarks even though Government might clarify that the remarks were meant to be only instructional in nature. It was, therefore, held that such instruction could either be oral or in writing separately. Unless such a procedural safeguard is available, it would be possible to introduce in the annual confidential

report of a government servant, critical and even adverse remarks in the guise of giving instructions. The Confidential Report is an important document and it provides the basic and vital imputs for assessing the performance of an officer and for his advancement in his career. It was therefore, held that adverse remarks could not be allowed to enter into such an important document in the guise of counselling or instructing the official concerned. In the instant case also, initially the adverse remarks were shown in the annual confidential report of the applicant for the year 1979-80 as found at page 26 in column 22 of the confidential report and that is being substituted by the President of India in allowing review application of the applicant as "advisory". This remark even advisory cannot be allowed to creep in the confidential report. Therefore, following the above decision, I hold that the impugned communication dated 28th January, 1984 from the Chief Commissioner of Income Tax (Administration) to the applicant should be quashed and the respondents should be directed to expung the adverse remarks against the applicant in his confidential report for the year 1979-80.

Mr. M.R. Bhatt invited my attention to para 6 of the judgment referred to above, in which Rule 8 of All India Services (Confidential Rolls) Rules, 1970 is referred to and he submitted that O.M. dated 3rd February, 1987 is also referred and he tried to distinguish the judgment from the facts of this case. I do not agree with him that the judgment given by C.A.T., Madras Bench can be distinguished from the facts of this case. The ratio of the judgment is to be followed and there is no reason not to follow the ratio of the judgment. C.A.T. Madras Bench had also held that adverse remarks should not be allowed to enter into an important document like annual confidential report in the guise of instructing the official concerned and the impugned communication was directed to be expunged from the confidential report. The above decision on all four applies to this case before me.

5. The applicant tried to refer to many other judgments and tried to make submissions on several points, but in view of the above judgment cited by him and which applies to this case, it is not necessary to deal with other points raised by him. Hence the following order :

ORDER

The application is allowed. The impugned communication-cum-order dated 28th January, 1984 from the Chief Commissioner of Income Tax (Administration) regarding the review application result treating the adverse remarks of the applicant in his confidential report for the year 1979-80 as "advisory" is quashed and the respondents are directed to expunge the adverse remarks against the applicant in his confidential report for the year 1979-80 dated 6th August, 1981. There will be no order as to costs.

The application is disposed of.

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(R.C. BHATT)
Member (J)

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Coram : Hon'ble Mr P H Trivedi .. Vice Chairman
Hon'ble Mr P M Joshi .. Judicial Member

31/3/1987

Learned advocate Mr MR Bhatt for the respondents states that he needs time for filing reply. He may do so within 15 days of this order. Final Hearing to be fixed in due course. Party in person to be intimated date of hearing.

Pravin
(P H Trivedi)
Vice Chairman

JM
(P M Joshi)
Judicial Member